(21,512.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 716.

WESLEY C. RICHARDSON, LAFAYETTE S. SULLIVAN, AND NANCY E. JONES, APPELLANTS,

vs.

JUDSON HARMON, RECEIVER OF THE TOLEDO TERMINAL & RAILWAY COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 8, 1909.

1 In the District Court of the United States for the Northern District of Ohio, Eastern Division. In Admiralty.

No. 2435.

In the Matter of the Petition of WESLEY C. RICHARDSON, LAFAYETTE S. SULLIVAN, and NANCY E. JONES, Owners of the Barge "Crete," for Limitation of Liability.

Stipulation for Costs.

Whereas a petition was filed in said Court on the 10th day of May, 1907, by Wesley C. Richardson, La Fayette S. Sullivan and Nancy E. Jones, as petitioners praying for a limitation of their liability as owners of the Barge "Crete" for the reasons and causes in said petition mentioned, and the said Wesley C. Richardson, La Fayette S. Sullivan and Nancy E. Jones, as principals, and Wesley C. Richardson as surety, the parties hereto, hereby covenanting and agreeing that in case of default or contumacy on the part of the said Wesley C. Richardson, La Fayette S. Sullivan and Nancy E. Jones or their surety, execution may issue against their goods, chattels and lands for the sum of Two Hundred and Fifty Dollars ($250.00).

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern that the stipulators undersigned shall pay and be bound in the sum of Two Hundred and Fifty Dollars ($250.00) conditioned that the said Wesley C. Richardson, La Fayette S. Sullivan and Nancy E. Jones, above named, shall pay all such costs as shall be awarded against them by this Court or, in case of appeal, by the appellate court, or for which they may be liable.

W. C. RICHARDSON,
LA FAYETTE S. SULLIVAN,
NANCY E. JONES,
By GOULDER, GOLDING & MASTEN,
Principals.

2 GOULDER, HOLDING & MASTEN, *Surety.*

Taken and acknowledged this 25th day of May, 1907, before me.
[NOTARIAL SEAL.] FREDERICK L. LECKIE,
Notary Public.

Tax fee, 40¢.

NORTHERN DISTRICT AND STATE OF OHIO,
County of Cuyahoga, ss:

Wesley C. Richardson, being duly sworn, deposes and says that he is worth the sum of Five Hundred Dollars ($500) in unencumbered real estate in the County of Cuyahoga in said District, over and above all just debts and liabilities.

W. C. RICHARDSON.

Subscribed in my presence and sworn to before me this 25th day of May, 1907.

[NOTARIAL SEAL.] FREDERICK L. LECKIE,
Notary Public.

Tax fee, 40¢.

3 No. 2435. United States District Court, Northern District of Ohio, Eastern Division. In the matter of the petition of Wesley C. Richardson, *et al.*, for Limitation of Liability. Stipulation for costs. Filed May 25, 1907, at — o'clock — M. H. F. Carleton, Clerk. Goulder, Holding & Masten, Cleveland, Ohio.

4 April Term, A. D. 1907.

SATURDAY, *May 25th, A. D.* 1907.

Present: The Honorable Robert W. Tayler, District Judge.

2435. Admiralty.

In the Matter of the Petition of WESLEY C. RICHARDSON, LA FAYETTE S. SULLIVAN, and NANCY E. JONES, Owners of the Barge "Crete," for Limitation of Liability.

Upon reading the petition of Wesley C. Richardson, La Fayette S. Sullivan and Nancy E. Jones for limitation of their liability as owners of the Barge "Crete," her tackle, apparel and furniture, on account of damage, loss and injury done, occasioned and incurred as in said petition stated, in which said petitioners pray that the value of their interest in the Barge "Crete" and her freight pending shall be duly appraised according to law and the rules and practice of this Court, and it appearing to the Court that the said Barge "Crete" is now in Cleveland, Ohio, within this District, and the Court being fully advised,

It is hereby ordered that C. E. Benham, James Macey and C. L. Hutchinson, are hereby appointed appraisers to appraise and report the value of the petitioners' interest in the said Barge "Crete" and her freight pending at the end of her voyage as of the 14th day of October, 1906, after the disaster of collision between the said Barge "Crete" and an abutment of the Toledo Railway & Terminal Company's bridge at Toledo, Ohio, as in said petition shown, and report the same, with all due speed, to this Court.

Journal 28-58.

5 In the District Court of the United States for the Northern District of Ohio, Eastern Division. In Admiralty.

In the Matter of the Petition of WESLEY C. RICHARDSON, LA FAYETTE S. SULLIVAN, and NANCY E. JONES, Owners of the Barge "Crete," for Limitation of Liability.

Oath of Appraisers.

STATE OF OHIO,
County of Cuyahoga, ss:

We, the undersigned, do hereby severally and solemnly swear that we will well and truly, according to law and the best of our ability, make due and proper appraisement of the value of the interests of Wesley C. Richardson, La Fayette S. Sullivan and Nancy E. Jones, each owning a ⅓ interest in the Barge "Crete" her tackle, apparel and furniture, as of the termination of her voyage in the harbor of Toledo, Ohio, after disaster between said Barge "Crete" and an abutment of the bridge of The Toledo Railway & Terminal Company across the Maumee River at Toledo, Ohio, on the 14th day of October, 1906, together with her freight then pending.

C. E. BENHAM.
JAMES NACEY,
C. L. HUTCHINSON.

Subscribed in my presence and sworn to before me, this 25th day of May, A. D. 1907.

F. J. DENZLER,
Notary Public.

[NOTARIAL SEAL.]

Tax Fee, 3 = $1.20.

6 (Endorsed:) No. 2435. United States District Court, Northern District of Ohio, Eastern Division. In the matter of The Petition of Wesley C. Richardson, La Fayette S. Sullivan and Nancy E. Jones, owners of the Barge "Crete," for Limitation of Liability. Oath of Appraisers. Filed May 25, 1907, at — o'clock — M. H. F. Carleton, Clerk.

7 In the District Court of the United States for the Northern District of Ohio, Eastern Division. In Admiralty.

No. —.

In the Matter of the Petition of WESLEY C. RICHARDSON, LAFAYETTE S. SULLIVAN, and NANCY E. JONES, Owners of the Barge "Crete," for Limitation of Liability.

Return of Appraisers.

STATE OF OHIO,
County of Cuyahoga, ss:

We, the undersigned, do hereby certify that we personally visited the Barge "Crete" in the port of Cleveland, Ohio, on the 27th day of May, 1907, and after due and sufficient examination and proper consideration do report the several one-third (1/3) interests and value of the interests of Wesley C. Richardson, La Fayette S. Sullivan and Nancy E. Jones in said Barge "Crete" as of the termination of her voyage at the port of Toledo, Ohio, after her disaster of collision with an abutment of the bridge of The Toledo Railway & Terminal Company across the Maumee River at Toledo, Ohio, on the 14th day of October, 1906, at $3333.33 1/3 respectively, and said petitioners' interest in her freight then pending at $830.50/100, respectively.

C. S. HUTCHINSON.
JAMES NACEY.
C. E. BENHAM.

8 (Endorsed:) No. 2435. In the District Court of the United States for the Northern District of Ohio, Eastern Division. In Admiralty. In the Matter of the Petition of Wesley C. Richardson, Lafayette S. Sullivan and Nancy E. Jones, owners of the Barge "Crete," for Limitation of Liability. Return of Appraisers. Filed Jul- 2, 1907, at — o'clock —. M. H. F. Carleton, Clerk.

9 In the District Court of the United States for the Northern District of Ohio, Eastern Division. In Admiralty.

No. —.

In the Matter of the Petition of WESLEY C. RICHARDSON, LAFAYETTE S. SULLIVAN, and NANCY E. JONES, Owners of the Barge "Crete," for Limitation of Liability.

Stipulation for Value of Barge "Crete."

Whereas a libel and petition was filed on the 25th day of May, 1907, by Wesley C. Richardson, La Fayette S. Sullivan and Nancy

E. Jones, as owners of the Barge "Crete," praying for a limitation of their liability for any loss, damage or injury arising out of a certain collision between said Barge "Crete" and an abutment of the bridge of The Toledo Railway & Terminal Company across the Maumee River at Toledo, Ohio, which occurred on the 14th day of October, 1906, and the interest of petitioners in said Barge "Crete" and her freight pending has been duly fixed at the sum of Twelve Thousand, Four Hundred, Ninety-one and 52/100 Dollars ($12,491.52), as appears from the report of the appraisers, now on file in this Court, and all the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the petitioners or their surety, execution for the above appraised amount with interest thereon from this date may issue against their goods, chattels and lands.

Now, therefore, the condition of this stipulation is such that if the petitioners Wesley C. Richardson, La Fayette S. Sullivan and Nancy E. Jones, and The Bankers Surety Company, their stipulator undersigned, shall abide by all orders of the court, interlocutory or final, and pay the amount awarded by the final decree rendered by this Court or by any appellate court, if appeal
10 intervene, but not exceeding the sum of Twelve Thousand, Four Hundred, Ninety-one and 52/100 Dollars ($12,491.52), with interest from the date thereof, then this stipulation to be void; otherwise to remain in full force and virtue.

WESLEY C. RICHARDSON,
LA FAYETTE S. SULLIVAN,
NANCY E. JONES,
By W. C. RICHARDSON.

THE BANKERS SURETY COMPANY.
GEO. H. OLMSTED, *President.*

Attest:
M. A. CRAIG, *Secretary.*

Taken and acknowledged before me this 2 day of July, 1907.

[OFFICIAL SEAL.] F. S. MASTEN,
Notary Public.

Approved this 2 day of July, 1997.

TAYLER, *J.*

11 (Endorsed:) No. 2435. In the District Court of the United States for the Northern District of Ohio, Eastern Division. In Admiralty. In the matter of the Petition of Wesley C. Richardson, La Fayette S. Sullivan and Nancy E. Jones, owners of the Barge "Crete," for Limitation of Liability. Stipulation for value of Barge "Crete." Filed Jul- 2, 1907, at — o'clock — M. H. F. Carleton, Clerk.

12 April Term, A. D. 1907.

TUESDAY, *July 2nd, A. D.* 1907.

Present: The Honorable Robert W. Tayler, District Judge.

2435. Admiralty.

In the Matter of the Petition of WESLEY C. RICHARDSON, LA FAYETTE S. SULLIVAN, and NANCY E. JONES, Owners of the Barge "Crete," for Limitation of Liability.

Whereas a petition was filed in this court on the 25th day of May, 1907, by Wesley C. Richardson, La Fayette S. Sullivan and Nancy E. Jones, owners of the Barge "Crete," petitioning for a limitation of their liability as owners of the said barge, her tackle, apparel and furniture, and her freight pending on October 14, 1906, with leave to contest as to all or any liability on account of the matters or things stated in said petition and pursuant to the prayer of said petition, and due and proper appraisement has been made of the value of the petitioners' interest in said barge and her freight pending at Twelve Thousand, Four Hundred, Ninety-one and 52/100 Dollars ($12491.52):

Now, therefore, it is ordered that Wesley C. Richardson, La Fayette S. Sullivan and Nancy E. Jones shall pay into the registry of this court, to abide further order of the court, the sum of four thousand, one hundred, sixty-three and 84/100 dollars ($4163.84) each, or at their option that each of them give stipulation in due and proper form, with sufficient surety, for the sum of four thousand, one hundred, sixty-three and 84/100 dollars ($4163.84) and interest thereon from this 2nd day of July, 1907, until the same shall be paid, or shall give a single bond for the sum of twelve thousand, four hundred, ninety-one and 52/100 dollars ($12491.52), conditioned

13 that the said Wesley C. Richardson, La Fayette S. Sullivan, and Nancy E. Jones, petitioners, will each pay said sum of four thousand, one hundred, sixty-three and 84/100 dollars ($4163.84) and the interest then when and as the same may be ordered by this Court; and be it further ordered that on said payment or the giving of such stipulation a monition issue against each and every one having or claiming to have sustained damage, loss or injury by or in consequence of the disaster referred to in said petition, citing them to present and make due proof of their said claims before H. F. Carleton, a Commissioner of this court, on or before the time mentioned in said writ, not less than ninety (90) days from the date of said monition, with liberty to petitioners to contest as to all or any claim so filed and as to any liability, and with like liberty and privilege to any person in interest so appearing to contest any claim presented; and it is further ordered that each and every person claiming damage by or in consequence of the matters and things set up in said petition be enjoined in accordance with the prayer of said petition from further prosecution or from instituting

or prosecuting any action in any court or taking any legal proceedings whatever in any other proceedings than this for loss, damage or injury done, occasioned or incurred by or in consequence of the disaster referred to in said petition, and said monition be published in the Cleveland Leader and in the Toledo Blade for a period of eight weeks once each week, and that said monition and injunction be served on the parties by the Marshal, so far as they are within this District and by mail outside of this District.

Journal 28-82.

14 In the District Court of the United States for the Northern District of Ohio, Eastern Division. In Admiralty.

No. —.

In the Matter of the Petition of WESLEY C. RICHARDSON, LAFAYETTE S. SULLIVAN, and NANCY E. JONES, Owners of the Barge "Crete," for Limitation of Liability.

Monition.

The President of the United States to the Marshal of said District, Greeting:

Whereas a petition has been filed in the District Court of the United States for the Northern District of Ohio, Eastern Division, on the 25th day of May, 1907, by Wesley C. Richardson, La Fayette S. Sullivan and Nancy E. Jones, owners of the Barge "Crete," praying a decree of said court that neither said petitioners nor the Barge "Crete" is liable for the loss, damage or injury occasioned by the collision disaster in said petition set forth occurring on the 14th day of October, 1906, between the said Barge "Crete" and an abutment of the Toledo Railway & Terminal Company's bridge across the Maumee River at Toledo, Ohio, and that in any event the said petitioners are entitled to the benefits of the provisions of the maritime law and of the statutes of the United States of America in Limitation of Liability; and

Whereas said Court has caused due appraisement to be made of the value of petitioners' interests in said barge in her damaged condition at the date of and after said disaster, together with freight pending, which said value has been ascertained to be the sum of $4163.84, to each of said petitioners;

Whereupon said Court has authorized and directed that a
15 stipulation be entered for said sums by each of said petitioners or a single bond for $12,491.52 to stand in the place and stead of the said Barge "Crete" and her freight then pending, which stipulation for said sum of $12,491.52 has been duly entered into and approved:

And the said Court has ordered that a monition issue to all persons having or claiming to have sustained loss, damage or injury by reason of the premises, citing them to appear before the Court

and make proof of their respective claims, and has appointed H. F. Carleton as Commissioner, before whom such proof shall be made, with liberty to the petitioners and any person in interest to contest any claim so presented:

You are, therefore, hereby commanded to cite all persons having or pretending to have claims for any loss, destruction, damage or injury occasioned by reason of the said disaster, to be and appear before the said Court at a session thereof to be held in the District Court room in the City of Cleveland, Ohio, on the 3rd day of October, 1907, at ten o'clock A. M., and then and there answer to said petition, and to make their allegations in that behalf, and on or before said date to make due proof of their respective claims before the said Commissioner at his office in the Federal Building in the City of Cleveland, with liberty to any party in interest to contest any such claims.

And what you shall have done in the premises do you there make due return, together with this writ.

Witness the Honorable Robert W. Tayler, Judge of the District Court, of the United States for the Northern District of Ohio, this 2nd day of July, in the year of our Lord one *one* thousand nine hundred and seven, and the independence of the United States the one hundred and thirty-first.

[OFFICIAL SEAL.] H. F. CARLETON, *Clerk.*

16 THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

U. S. Marshal's Return.

Received this writ at Toledo, Ohio, July 3, 1907, and on the same day and place, I served the same on the within named The Toledo Railway and Terminal Company, by delivering a true and certified copy hereof with all the endorsements thereon to T. B. Fogg personally, Managing Agent of said The Toledo Railway and Terminal Company; the President, Chairman of the Board of Directors or Trustees, Cashier, Treasurer, Secretary, Clerk or other chief officer could not be found within my district. Judson Harmon, Receiver of said The Toledo Railway and Terminal Company, and Charles G. Cunningham and F. H. & G. L. Canfield, attorneys for said The Toledo Railway and Terminal Company could not be found within my district.

F. M. CHANDLER,
U. S. Marshal,
By B. J. WAGNER, *Deputy.*

Fees:

Service	$2.00
Travel	.12
	$2.12

Pursuant to the order of the Court, the within named Charles G. Cunningham and F. H. & G. L. Canfield, being outside of this District, a copy of this writ was mailed on July 3, 1907.

F. M. CHANDLER,
U. S. Marshal,
By E. A. CLOBITZ, *Deputy.*

17 (Endorsed:) U. S. Marshal's No. 2918. No. 2435. In the District Court of the United States for the Northern District of Ohio, Eastern Division. In Admiralty. In the matter of the petition of Wesley C. Richardson, Lafayette S. Sullivan and Nancy E. Jones, owners of the barge "Crete," for limitation of liability. Monition. Filed Jul- 6, 1907, at — o'clock — M. H. F. Carleton, Clerk. Goulder, Holding & Masten, Proctors for Petitioners.

18 In the District Court of the United States for the Northern District of Ohio, Eastern Division. In Admiralty.

No. —.

In the Matter of the Petition of WESLEY C. RICHARDSON, LAFAYETTE S. SULLIVAN, and NANCY E. JONES, Owners of the Barge "Crete," for Limitation of Liability.

Injunction.

The President of the United States of America to the Toledo Railway & Terminal Company and to Judson Harmon as receiver thereof; to Charles G. Cunningham and F. H. & G. L. Canfield, attorneys for said company and for said receiver, and to all persons and to their and each of their agents, servants, proctors, attorneys, advocates, and counsellors, who have or claim to have claims against the said Barge "Crete," or against Wesley C. Richardson, La Fayette S. Sullivan, and Nancy E. Jones as her owners, for loss, damage, or injury done, suffered, or occasioned by reason of a collision between said barge "Crete" and an abutment of the Toledo Railway & Terminal Company's bridge across the Maumee River at Toledo, Ohio, which is alleged by an action begun in the Court of Common Pleas of Lucas County, Ohio, to have been caused by the fault of the said barge "Crete," her officers or crew, or for which the said barge "Crete" or her owners, Wesley C. Richardson, La Fayette S. Sullivan, and Nancy E. Jones, may be sought to be charged, said collision occurring on the navigable waters of the United States on or about the 14th day of October, 1906, Greeting:

Wesley C. Richardson, La Fayette S. Sullivan and Nancy E. Jones having duly filed their petition in the District Court of the United States for the Northern District of Ohio, praying for limitation of their liability pursuant to the maritime law and the acts of

Congress in that regard and the rules in admiralty of said Court in such cases made and provided, for damage by reason of loss, damage or injury or destruction caused or occasioned at the time and as hereinbefore stated, and said Court having, pursuant to law and the rules and practice of said Court, duly appraised the value of
19 the said Barge Crete, her tackle, apparel and furniture, and the said Wesley C. Richardson, La Fayette S. Sullivan and Nancy E. Jones, owners of said barge, "Crete" and her appurtenances, having made and filed in the office of the clerk of said Court a stipulation, with approved surety, for payment into court of the amount of said appraisement and interest from the 2nd day of July, 1907, pursuant to law and the rules of practice of said Court, and a monition having issued according to law, citing all persons claiming damages for loss, damage, injury or destruction, as in said petition alleged, and set forth, and each of them to appear before said District Court of the United States for the Northern District of Ohio, Eastern Division, on or before the 3rd day of October, 1907, at ten o'clock A. M., the time specified in said writ, and make due proof of their respective claims on or before the time specified therein according to law and the rules and practice of said court; and an order having been made and entered and filed thaa an injunction issue restraining all persons, their agents, servants, proctors, attorneys, advocates and counsellors, and each of them, from prosecuting any suit or suits commenced or to be commenced by any of them by reason of the matters and things set forth in said petition filed on the 25th day of May, 1907:

Now, therefore, by virtue of the power and authority vested in said Court, and pursuant to the statutes in such cases made and provided, you the said The Toledo Railway & Terminal Company and Judson Harmon as Receiver thereof, and Charles G. Cunningham and F. H. & G. L. Canfield, attorneys for said Company and said Receiver, and each of you, and all other persons and each of your or their agents, servants, attorneys, proctors, counsellors and advocates, are
20 hereby enjoined and restrained, and each of you and they are hereby commanded to refrain from prosecuting any suit or suits, commenced or to be commenced, against the said Barge "Crete," or against her said owners, Wesley C. Richardson, La Fayette S. Sullivan and Nancy E. Jones, or from taking any steps or proceedings whatever in any action or actions, suit or suits, proceeding or proceedings, now pending, as well as from in any manner commencing, bringing or instituting any suit or suits whatever upon any cause of action whatever for loss, damage, injury or destruction done, suffered or occasioned on the 14th day of October, 1906, in the harbor of Toledo, Ohio, for which it is sought to charge said Barge "Crete" or her said owners, Wesley C. Richardson, La Fayette S. Sullivan and Nancy E. Jones, as aforesaid, except as in said monition directed.

Witness the Honorable Robert W. Tayler, Judge of the District Court of the United States at the City of Cleveland, in the Northern District of Ohio, this 2nd day of July, in the year of our Lord one

thousand nine hundred and seven, and in the year of the Independence of the United States the one hundred and thirty-first.

ROBERT W. TAYLER,
D. Judge.

Attest:
H. F. CARLETON, *Clerk.*

[OFFICIAL SEAL.]

21 THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

U. S. Marshal's Return.

Received this writ at Toledo, Ohio, July 3, 1907, and on the same day and place, I served the same on the within named The Toledo Railway and Terminal Company, by delivering a true and certified copy hereof with all the endorsements thereon to T. B. Fogg personally, Managing Agent of The Toledo Railway and Terminal Company; the President, Chairman of the Board of Directors or Trustees, Cashier, Treasurer, Secretary, Clerk or other chief officer could not be found within my district. Judson Harman, receiver of said The Toledo Railway and Terminal Company, and Charles G. Cunningham, and F. H. & G. L. Canfield, attorneys for said The Toledo Railway and Terminal Company could not be found within my district.

F. M. CHANDLER,
U. S. Marshal,
By B. J. WAGNER, *Deputy.*

Fees:

Service	$2.00
Travel to serve	.12
	$2.12

Pursuant to the order of the Court, the within named Charles G. Cunningham and F. H. & G. L. Canfield being outside of this district, a copy of this writ was mailed on July 3, 1907.

F. M. CHANDLER,
U. S. Marshal,
By E. A. CLOBITZ, *Deputy.*

22 (Endorsed:) U. S. Marshal's No. 2918. No. 2435. In the District Court of the United States for the Northern District of Ohio, Eastern Division, in Admiralty. In the matter of the Petition of Wesley C. Richardson, La Fayette S. Sullivan, and Nancy E. Jones, Owners of the Barge "Crete," for Limitation of Liability. Injunction. Filed Jul- 6, 1907, at — o'clock — M. H. F. Carleton, Clerk. Goulder, Holding & Masten, Proctors for Petitioners.

23 *Claim.*

District Court of the United States for the Northern District of Ohio, Eastern Division. In Admiralty.

In the Matter of the Petition of WESLEY C. RICHARDSON ET AL., Owners of the Barge Crete, for Limitation of Liability.

To the Honorable Robert W. Tayler, Judge of said Court:

Now comes Judson Harmon, as receiver of the Toledo Railway & Terminal Company, and in obedience to the monition of this court and its injunction heretofore served upon him, but excepting and reserving all right of objection to the jurisdiction of this Court in the premises, presents this, his claim to the court and its commissioner herein appointed, as follows:

1. This claimant, at all of the times herein mentioned, was, and is, the receiver of the said Toledo Railway Terminal Company, duly appointed by an order of this Court, in equity, on or about January 4, 1906; said Company was, and is, a corporation organized and existing under and by virtue of the laws of the State of Ohio, and owner of a railroad in or near the city of Toledo, in said State, partly in Lucas County and partly in Wood County; said Railroad included a bridge spanning the Maumee River, near a pilot where it empties into Maumee Bay (so-called); said bridge was duly constructed and maintained under lawful authority and according to law; and was a necessary part of said Railway and essential to the performance of its obligations; and it was duly equipped with a good
24 and sufficient span or draw, according to law, which afforded ample passage for all vessels navigating the waters aforesaid.

2. On or about October 14, 1906, the said schooner "Crete," bound up through the river, approached said bridge and the draw thereof was duly and properly opened by those in charge so that there was a free, adequate and unobstructed passage for the transit of said barge through said bridge; that said barge, with proper care and handling, would have passed through said bridge safely and without injury or damage, but she was so carelessly and negligently handled and managed by those in charge of her that she ran into the easterly pier or abutment of said bridge, at high speed and with great force, and thereby broke, injured and damaged the same, causing loss to this claimant in the sum of, to-wit: Thirty-five thousand dollars.

3. The said bridge and pier or abutment aforesaid were and are a structure permanently affixed to the soil and forming a part thereof, in Lucas County, in the state of Ohio aforesaid, and said collision and the damage therefrom resulting constituted a trespass to real estate in said state and county, for which this claimant brought suit in the Court of Common Pleas for Lucas County, Ohio, against the said Wesley C. Richardson and Lafayette S. Sullivan, as owners of said barge; process of said court was duly served upon said defendants and said court acquired and had, as this claimant is advised and believes, sole and exclusive jurisdiction of said action; while said

action was pending in said court of the state of Ohio, the injunction of this Court in this cause was served upon this claimant commanding him to refrain from prosecuting said action or suit, and to appear in this court with his claim, in accordance with its
25 monition herein, also served upon him.

4. This claimant further shows to the court that in obedience to said injunction he has refrained from further prosecution of said action in the State Court and, as commanded by said monition, he has filed his answer to said petition, and likewise now presents this his claim to this Court and its commissioner, but he avers that, as he is advised and believes, the subject matter of said claim is not one of admiralty cognizance in the maritime law of the United States and not within the jurisdiction of this court to enforce or deny, that it is not among the liabilities of shipowners which are limited by the statutes of the United States referred to in said petition, and that his said claim and cause of action are only cognizable at common law in the State Court in which his action therefor was pending when its prosecution was enjoined by process of this Court.

5. This claimant further shows to the court that his action in presenting this his claim under the constraint of its injunction and monition as aforesaid is involuntary and that he submits it with the reservation of all rights of exceptions to the jurisdiction of this court over said claim and cause of action as hereinbefore reserved and also as set forth in his answer to said petition.

In consideration of the premises this claimant prays that the court will stay all further proceedings in respect of further proof of his said claim until the question of its jurisdiction and of the right of said petitioners to maintain their said petition against him are finally determined; that his claim may be dismissed without prejudice to his right to prosecute the same further in a court of competent jurisdiction, or, in the alternative, if jurisdiction be retained, that the court will pronounce for his damage sustained as aforesaid,
26 with interest and costs, and that he may have such further relief as to law and justice may appertain.

JUDSON HARMON,
Receiver of the Toledo Railway and Terminal Company,
By T. B. FOGG,
General Manager, Respondent.

F. H. & G. L. CANFIELD,
Proctors for Respondent.

STATE OF OHIO,
Lucas County, ss:

On this 25th day of September, 1907, before me, the subscriber, personally appeared Thomas B. Fogg, General Manager, for Judson Harmon, Receiver, who subscribed the foregoing claim in my presence and made oath that he had read the same and knew the contents thereof, and that it was true, except as to those portions stated to be on information and belief, and as to such he believes it to be true; that he is duly authorized herein and that the said Judson

Harmon, Receiver, is not a resident of and is not now in the jurisdiction of the Court aforesaid.

RAYMOND T. GARRISON,
[NOTARIAL SEAL.] *Notary Public, Lucas County, Ohio.*

27 (Endorsed:) No. 2435. U. S. Dist. Court for the N. D. of Ohio, East. Div. In Admiralty. In the matter of the petition of Wesley S. Richardson *et al.*, owner- of the barge Crete, for limitation of liability. Claim of Judson Harmon. Filed Oct. 1, 1907, at — o'clock — M. H. F. Carleton, Clerk. F. H. & G. L. Canfield, Proctors for Respondent.

28 October Term, A. D. 1908.

THURSDAY, *December 24th, A. D.* 1908.

Present: The Honorable Robert W. Tayler, District Judge.

In Admiralty. No. 2435.

In the Matter of the Petition of WESLEY C. RICHARDSON, LA FAYETTE S. SULLIVAN, and NANCY E. JONES, Owners of the Barge "Crete," for Limitation of Liability.

Now on this 24th day of December, 1908, this matter came on to be heard on the exceptions of Judson Harmon, Receiver of The Toledo Railway & Terminal Company; and the court, being fully advised thereon, it is ordered that the exceptions be, and they are hereby, sustained, and the injunction heretofore issuing as to said receiver and his counsel be, and the same is hereby, dissolved.

Notice of appeal being given in open court, bond superseding said order sustaining the exceptions and dissolving the unjunction is fixed at One Thousand Dollars.

Journal 29-120.

29 In the District Court of the United States for the Northern District of Ohio, Eastern Division.

No. 2435.

In the Matter of the Petition of WESLEY C. RICHARDSON, LAFAYETTE S. SULLIVAN, and NANCY E. JONES, Owners of the Barge "Crete," for Limitation of Liability as Owners.

Notice of Appeal.

Judson Harmon, receiver of the Toledo Terminal & Railway Co.; F. H. & G. L. Canfield, Attorneys:

Please take notice that Wesley C. Richardson, Lafayette S. Sullivan and Nancy E. Jones have appealed from the decree sustaining

your exceptions in the above matter, entered on the 24th day of December, 1908, to the Supreme Court of the United States.

GOULDER, HOLDING & MASTEN,
Proctors for Petitioner.

Service of the above notice is hereby accepted, issuance of citation waived and our appearance entered.
January 4, 1909.

F. H. & G. L. CANFIELD.

30 (Endorsed:) No. 2435. In the District Court of the United States for the Northern District of Ohio, Eastern Division. In the Matter of the Petition of Wesley G. Richardson, Lafayette S. Sullivan and Nancy E. Jones, Owners of the Barge "Crete," for Limitation of Liability as Owners. Notice of Appeal. Filed Jan. 5, 1909, at — o'clock —. M. H. F. Carleton, Clerk. Goulder, Holding & Masten, Cleveland, Ohio.

31 In the District Court of the United States for the Northern District of Ohio, Eastern Division.

No. 2435.

In the Matter of the Petition of WESLEY C. RICHARDSON, LAFAYETTE S. SULLIVAN, and NANCY E. JONES, Owners of the Barge "Crete," for Limitation of Liability as Owners.

Petition for Appeal.

To the Honorable Robert W. Tayler, Judge of the United States District Court for said District:

Now come Wesley C. Richardson, Lafayette S. Sullivan and Nancy E. Jones, petitioners in the above entitled cause, by their proctors, Goulder, Holding & Masten, and, feeling aggrieved by the final decree of this court, made and entered on the 24th day of December, 1908, sustaining the exceptions filed to their petition herein and dismissing the same, they hereby claim an appeal from the whole of said decree to the Supreme Court of the United States, pursuant to the provisions of Section 5 of the Act of March 3rd, 1891, providing that appeals in cases in which the jurisdiction of the court is in issue may be taken from the District Court directly to the Supreme Court; and pray that said appeal be allowed, that the records and proceedings in said cause be duly certified to the Supreme Court, and that the question of jurisdiction raised by the exceptions to said petition, on which said final decree was based, be certified to the Supreme Court for decision.

GOULDER, HOLDING & MASTEN,
Proctors for Petitioners.

32 (Endorsed:) No. 2435. In the District Court of the United States for the Northern District of Ohio, Eastern

Division. In the matter of the petition of Wesley C. Richardson, Lafayette S. Sullivan and Nancy E. Jones, owners of the barge "Crete," for limitation of liability as owners. Petition for Appeal. Filed Jan. 2, 1909, at — o'clock — M. H. F. Carleton, Clerk. Goulder, Holding & Masten, Cleveland, Ohio.

33 October Term, A. D. 1908.

SATURDAY, *January 2nd, A. D.* 1909.

Present: The Honorable Robert W. Tayler, District Judge.

2435.

In the Matter of the Petition of WESLEY C. RICHARDSON, LAFAYETTE S. SULLIVAN, and NANCY E. JONES, Owners of the Barge "Crete," for Limitation of Liability as Owners.

The petition of Wesley C. Richardson, Lafayette S. Sullivan and Nancy E. Jones, petitioners in the above entitled cause, praying for the allowance of an appeal from the decree of this court in said cause to the Supreme Court of the United States having been duly considered, the appeal is hereby allowed and bond on appeal fixed at One Thousand Dollars ($1,000).

Journal 29-126.

34 In the District Court of the United States for the Northern District of Ohio, Eastern Division.

No. 2435.

In the Matter of the Petition of WESLEY C. RICHARDSON, LAFAYETTE S. SULLIVAN, and NANCY E. JONES, Owners of the Barge "Crete," for Limitation of Liability as Owners.

Appeal Bond.

Know all men by these presents, that Wesley C. Richardson, Lafayette S. Sullivan and Nancy E. Jones, and The Bankers Surety Company, of Cleveland, Ohio, are held and firmly bound unto Judson Harmon, Receiver of the Toledo Terminal & Railway Company, and to his successors, and to whom it may concern, in the sum of One Thousand Dollars ($1,000), to the payment of which, well and truly to be made, we hereby bind ourselves, our successors and assigns, jointly and severally, by these presents.

The condition of this obligation is such that, whereas the above named Wesley C. Richardson, Lafayette S. Sullivan and Nancy E. Jones, appellants, have appealed to the Supreme Court of the United States from the final decree heretofore entered in this cause dismissing the petition;

Now, therefore, if the above named appellants shall prosecute their appeal to effect and pay all costs which may be decreed against them upon such appeal, then the above obligation to be void; otherwise to remain in full force and effect.

[SEAL.] WESLEY C. RICHARDSON,
LAFAYETTE S. SULLIVAN,
NANCY E. JONES,
By W. C. RICHARDSON,
Managing Owner.

THE BANKERS SURETY COMPANY,
By P. W. HARVEY, *President.*

Attest:
M. A. CRAIG, *Secretary.*

Approved:
R. W. TAYLER, *Dist. Judge.*

Jan. 2, 1909.

35 (Endorsed:) No. 2435. In the District Court of the United States for the Northern District of Ohio, Eastern Division. In the Matter of the Petition of Wesley C. Richardson, Lafayette S. Sullivan, and Nancy E. Jones, Owners of the Barge "Crete," for Limitation of Liability as Owners. Appeal Bond. Filed Jan. 2, 1909, at — o'clock — M. H. F. Carleton, Clerk. Goulder, Holding & Masten, Cleveland, Ohio.

36 In the District Court of the United States for the Northern District of Ohio, Eastern Division.

No. 2435.

In the Matter of the Petition of WESLEY C. RICHARDSON, LAFAYETTE S. SULLIVAN, and NANCY E. JONES, Owners of the Barge "Crete," for Limitation of Liability.

Stipulation.

It is hereby stipulated between all the parties in the above entitled action, by their respective Proctors, that in preparing the transcript of the record in this action to be certified to the Supreme Court of the United States on the petitioners' appeal from the dismissal of the petition by the District Judge on the exceptions thereto, the Clerk of the District Court may omit therefrom the original libel or petition, as the certificate of the District Judge, which forms a part of the record, contains a full copy of said libel or petition, except the caption and verification thereof, and the exceptions and answer.

This stipulation is made pursuant to Section 3, Rule 52, of the General Admiralty Rules of the Supreme Court.
Dated Jan. 27th, 1909.

GOULDER, HOLDING & MASTEN,
Proctors for Wesley C. Richardson, Nancy E. Jones, and Lafayette S. Sullivan, Petitioners.
F. H. & G. L. CANFIELD,
Proctors for Judson Harmon, Receiver of the Toledo Terminal & Railway Company.

37 (Endorsed:) No. 2435. In the District Court of the United States for the Northern District of Ohio, Eastern Division. In the matter of the Petition of Wesley C. Richardson, La Fayette S. Sullivan, and Nancy E. Jones, Owners of the Barge "Crete," for Limitation of Liability. Filed Jan. 27, 1909, at — o'clock — M. H. F. Carleton, Clerk. Stipulation as to Transcript of Pleadings. Goulder, Holding & Masten, Cleveland, Ohio.

38 In the District Court of the United States for the Northern District of Ohio, Eastern Division.

No. 2435.

In the Matter of the Petition of WESLEY C. RICHARDSON, LAFAYETTE S. SULLIVAN, and NANCY E. JONES, Owners of the Barge "Crete," for Limitation of Liability.

Certificate of Jurisdictional Issues.

The questions on the jurisdiction of the Court in this action are hereby certified to the Supreme Court as follows:

On the 14th day of October, 1906, the Barge Crete, in tow of the tug A. W. Colton, was bound up the Maumee River, and in attempting to pass through the draw of The Toledo Railway & Terminal Company's bridge across the Maumee River the barge Crete collided with one of the piers of the bridge, doing considerable damage to both the bridge and herself. Action was begun in the Court of Common Pleas of Lucas County against two of the owners of the Barge Crete by Judson Harmon as Receiver for The Toledo Railway & Terminal Company.

On the 25th day of May, 1907, the owners of the Crete, two of whom live in Cleveland, and the barge Crete then being in Cleveland, filed their petition for limitation of liability as owners of said Barge Crete in the District Court of the United States for the Northern District of Ohio, sitting in Cleveland. The petition alleged as follows:

"The petition and libel of Wesley C. Richardson, La Fayette S. Sullivan, and Nancy E. Jones, each sole owner of a one-third interest in the barge "Crete," her tackle, apparel and furniture, in a cause of limitation of liability, civil and maritime, alleges as follows:

I. That the petitioners were, at the times hereinafter mentioned, each an owner of a one-third interest or part in the barge Crete, which said barge is now or soon will be in the port of Cleveland, Ohio, and within the jurisdiction of this Honorable Court.

II. That on the 6th day of October, 1906, said vessel left the port of Ashland, Wisconsin, bound thence to the Port of Toledo in the State of Ohio, laden with iron ore. She proceeded to the entrance to the port of Toledo, in tow of the Steamer Roumania, where she was taken in tow by the tug Colton for the purpose of proceeding up to her unloading berth in the City of Toledo, during all of which time she was properly manned and equipped and had a full complement of officers and seamen on board and was in all respects staunch and seaworthy. That while being towed up the Maumee River by the tug Colton the said barge collided with the abutment of a bridge across the Maumee River owned, controlled and
39 operated by The Toledo Railway and Terminal Company, and as a consequence thereof was seriously injured and sunk but was recovered and restored to serviceable condition by the expenditure of a large sum of money, to wit: the sum of $38071.50, and petitioners during the recovery and repair of said barge were deprived of her use for a period of fifty-two days, during which time the market value of her use and the value of her use to petitioners was $3000.00, making petitioners' claim on account thereof the sum of $41071.50, which it will claim of said Toledo Railway and Terminal Company and the tug which had her in tow.

That on the completion of said voyage the value of said barge did not exceed the sum of $12,000 and her pending freight was of the value of $2491.50; that, as your petitioners are informed, the abutment and the structure and railroad track thereon were seriously damaged by said disaster, and the said Toledo Railway & Terminal Company was deprived of the services of said bridge in the transaction of its business for a period of time. Your petitioners say that they are in fear of claims being brought against the said vessel or the owners, or both, and desire to and do claim a limitation of their liability as owners; that the said Toledo Railway and Terminal Company has instituted an action in the Common Pleas Court of Lucas County, Ohio, against your petitioner Wesley C. Richardson and your petitioner La Fayette S. Sullivan on account of said accident, claiming damages in the amount of $35,000, and petitioners are apprehensive of other actions being brought against the petitioners or some of them or their said barge.

Your petitioners say that said damage was done, occasioned and incurred without the privity or knowledge of your said petitioners or either of them and was without fault on the part of your said petitioners, or either of them, or of the said vessel or those in charge of her navigation, and that the damage done and claims against said vessel on the voyage on which the disaster occurred in the aggregate greatly exceed the value of the owners' interest in said vessel and of her freight pending, and the proportionate share thereof for which, if liable, each of your several petitioners would be called upon to pay, exceeds the amount of the value of said petitioners'

several interests in said vessel and her freight pending, and that each of said several owners is subject to suit *in personam* for the sum in the same or in different jurisdictions, and each claims the benefit of the statutes in limitation of liability, to wit: Sections 4283 and 4285, inclusive, of the Revised Statutes of the United States and of the acts amendatory thereof and supplemental thereto, especially Section 18 of the Act of June 26, 1884.

III. Your petitioners also desire and claim the right to defend as to any liability for said loss, damage and injury as authorized by law and General Admiralty Rule 56 and say that the circumstances of said disaster were as follows, and not otherwise:

The said barge Crete was taken in tow at the usual place outside by the said tug Colton and in tow of said tug and under her direction and charge was proceeding up the Maumee River, and the tug having signaled for the draw of said bridge to open, about 9:50 P. M. of October 14, 1906, the Crete, while endeavoring by all proper means to follow the tug and make the draw, came against the approach abutment of said bridge, occasioning the damage to the vessel and the bridge. Petitioners say that the said abutment of said bridge had a projecting part down stream with a sharp, square corner of masonry work on the channel side, which was obscured and was without protection piling of the usual or of any kind; that in consequence of the character of construction and unprotected condition, it was a dangerous and unwarrantable obstruction to the navigation of said river, and as the bow of the Crete came against the same, the sharp, unprotected corner thereof pierced the bow of the Crete so that she filled and sunk.

IV. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court and that the said barge Crete is now or soon will be at the port of Cleveland, within this district.

Wherefore, your petitioners pray that this Court will cause due appraisement to be had of the amount of the value of their interest in the barge Crete at the close of said voyage and her freight then pending, and will make an order for the payment of said amount into court or the giving of a stipulation with sureties providing for the payment of the amount of said appraisement as ordered by the court, such payment or stipulation to stand in place and instead of the said vessel, her tackle, apparel and furniture, in accordance with the law and rules and practice of this Court; that the Court will issue a monition to all persons claiming damages for any and all loss, destruction, damage or injury caused by or resulting from the collision aforesaid, citing them to appear before this Court or a commissioner thereof and make due proof of their respective claims at or before a certain time to be fixed by said writ; and also to appear and answer on oath the allegations of this petition according to law and the practice of this Court, and that this Court will issue its injunction to the Toledo Railway and Terminal Company and to Judson Harmon as Receiver of said Company, to Charles G. Cunningham and F. H. & G. L. Canfield, attorneys for said Company, and all other persons, their attorneys, agents and servants, restrain-

ing the prosecution of the aforesaid action in the Court of Common Pleas of Lucas County, Ohio, and the commencement and prosecution hereafter of any and all suits or actions or legal proceedings of any nature or description against your petitioners or the barge Crete in respect of any claim or claims arising out of said collision, other than in this proceeding, and that the Court in said proceeding will adjudge that petitioners and the said barge Crete are not, and none of them are, liable to any extent for said loss, damage or injury, or if it shall adjudge that they or either of them are liable, then that the liability of your petitioners be limited to the amount of the value of their respective interests in said barge and her freight pending at the close of the said voyage; and that the money so paid into this Court or secured to be paid as aforesaid be divided pro rata among such claimants as may duly prove their claims before this Court or its commissioner so as aforesaid appointed, saving to all parties any priority to which they may be legally entitled, and that your petitioners may have such other and further relief in the premises as may be just."

On the 1st day of October, 1907, exceptions were filed to the jurisdiction of the Court as follows:

"Now comes Judson Harmon as receiver of the Toledo Terminal & Railway Company, in obedience to the monition and injunction of this court, and presents his exceptions and answer to said petition, alleging and propounding, as follows:

He excepts to said petition because it does not state or make a cause of action against him within the jurisdiction of this Court, and because it appears from the facts pleaded in said petition
41 that his claim or cause of action against said petitioners is one solely cognizable by a court of common law and wholly and exclusively within the jurisdiction of the Common Pleas of Lucas County in the State of Ohio; and he further excepts to the jurisdiction of this Court for the reason that this suit, if at all within the jurisdiction of the Admiralty, should have been commenced in the District Court of the United States for the Northern District of Ohio, Western Division, and not elsewhere.

And this respondent saving and reserving to himself the benefit and advantage of all manner of exceptions and objection to said petition, and to all proceedings thereunder, and to the monition and injunction served upon him and his attorneys, and without waiving any objection or exception thereto, for answer to said petition says:

1. He admits the ownership of said barge by the said Richardson and Sullivan as alleged in the first article of said petition, but has no knowledge as to the other allegations thereof, and therefore leaves petitioners to their proofs.

2. He is not informed as to the voyage of said barge, as alleged in the second article of said petition, nor whether she was then staunch and seaworthy and properly manned and equipped and leaves petitioners to their proofs in such regard; he admits the collision of said barge with the abutment of said bridge, but has no information as to the damages thereby suffered by the "Crete," and

therefore prays that the same may be proved, if material in this proceeding.

He denies that on the completion of said voyage the value of said barge did not exceed Twelve Thousand Dollars, or that her pending freight was only Two Thousand Four Hundred Ninety-one and 50/100 —, and on information and belief, he avers that her real value was largely in excess of said sums; he admits that said abutment and the structure and the railroad track thereon were seriously damaged by said barge in said collision and that said Toledo Railroad & Terminal Company was deprived of the use of said bridge in the transaction of its business for considerable time, to its loss and damage, and that an action for the recovery of the damages so sustained was commenced by him, as therein alleged, but he denies that there are any other claims, suits or actions threatened or brought against said petitioners, or any of them, on account of said disaster.

He also denies the averment of said article that said damage was done, occasioned and incurred without the privity or knowledge of said petitioners, or without fault on the part of said petitioners, or of said vessel, or those in charge of her, or that the amount of damage done exceeds the value of the interest of said petitioner- in said barge and freight pending; and he further denies that said petitioners are entitled, either jointly or severally, to the benefit of the statutes in limitation of liability mentioned in said article.

3. As to article III of said petition he denies that petitioners are entitled to defend as to their liability for said loss, damage and injury in this proceeding, or that General Admiralty Rule 56 authorizes them so to do. He denies that the circumstances of said disaster are correctly stated in said article, and avers that the same are for the most part falsely or incorrectly stated therein. He denies that said bridge or abutment was a dangerous and unwarrantable obstruction to the navigation of the Maumee River, or that said barge received any injury therefrom otherwise than through the negligence and want of care of said petitioners and their agents in charge of her, and he shows to the court that the bridge and abutment aforesaid are real property, permanently affixed to, and a part of, the soil or land, erected and maintained by lawful authority and in accordance with law; that the liability of said petitioners to this respondent alleged in said petition accrued solely by reason of a tort committed on land to real estate in the body of a county and state and not on any navigable waters of the United States,
42 or place, subject to admiralty or maritime jurisdiction.

4. He denies Article IV of said petition and avers that said collision and the loss, damage and injury sustained thereby by him as such receiver are not within the jurisdiction of this Court.

He further denies that said petitioners are entitled to the relief prayed in said petition as against his claim, or that this Court has jurisdiction of said claim, or to entertain any proceedings for limitation of liability against it.

Wherefore this respondent prays that said petition may be dismissed as to his claim, and that the prayer of said petitioners for limitation of liability in respect thereof may be denied; that the in-

junction restraining the prosecution of his action at common law for his damage sustained by said trespass of said petitioners may be dissolved, with costs; and that he may have such other and further relief as to law and justice may appertain."

On the 24th day of October, 1908, a hearing was had upon said exceptions and the same were sustained, the Court holding that the provision added to the law relating to the liability of owners, masters and ships by the Act of 1884, Statutes at Large, —, does not limit the liability of the ship owner in respect of any transaction or subject except those that are within the jurisdiction of the District Court sitting as a court of admiralty, relating to the navigation of ships and the carrying of freight and passengers; that any cause of action against the owners of a ship which is not cognizable in admiralty may be prosecuted to judgment in any court in which jurisdiction may be had of the parties like any other action at common law; and that the vessel owned by the defendants and any other property which the defendants may own would be subject to execution in that judgment and to satisfaction for the full amount, without limitation.

In this case it appears that the right of recovery, if any, on behalf of the Receiver of the Toledo Terminal & Railway Company is not a right of action arising in admiralty but at common law, so that, suit to recover upon it having been commenced in the Common Pleas Court of the State, that Court has jurisdiction to try the case and this Court has no jurisdiction in respect to the limitation of liability upon the evidence growing out of the fact that the accident resulted from the collision of a vessel with the pier of the bridge.

The question of jurisdiction presented to the Supreme Court of the United States on this appeal, therefore, is as follows:

43 Has the District Court of the United States jurisdiction to entertain a libel or petition for limitation of liability of the owners of a vessel against claims for non-maritime damages or any claim for any liability or debt which is not within the admiralty and maritime jurisdiction of such Court?

In witness whereof, I have hereunto set my hand at Cleveland, Ohio, this 30 day of January, 1909.

R. W. TAYLER,
District Judge.

44 [Endorsed:] No. 2435. In the District Court of the United States for the Northern District of Ohio, Eastern Division. In Admiralty. In the matter of the petition of Wesley C. Richardson, Lafayette S. Sullivan and Nancy E. Jones, owners of the barge "Crete," for limitation of liability. Certificate of jurisdictional issues. Goulder, Holding & Masten, Proctors for Petitioner-. F. H. & G. L. Canfield, Proctors for Respondent. Filed Jan. 30, 1909, at — o'clock — M. H. F. Carleton, Clerk.

45 In the District Court of the United States for the Northern District of Ohio, Eastern Division. In Admiralty.

No. 2345.

In the Matter of the Petition of WESLEY C. RICHARDSON, LAFAYETTE S. SULLIVAN, and NANCY E. JONES, Owners of the Barge Crete, for Limitation of Liability.

Precipe.

To the Clerk:

You will please prepare transcript of the record of this cause, to be filed in the office of the Clerk of the United States Supreme Court under the appeal heretofore perfected to said court, and include in said transcript the following pleadings, proceedings and papers on file, to wit:

1. Stipulation for costs,
2. Order appointing appraisers,
3. Oath of appraisers,
4. Return of appraisers,
5. Stipulation for value of barge Crete,
6. Order granting injunction,
7. Monition,
8. Writ of injunction,
9. Claim of Judson Harmon, receiver of the Toledo Terminal & Railway Co.,
10. Order of court sustaining exceptions,
11. Notice of appeal,
12. Petition for appeal,
13. Order allowing appeal,
14. Bond on appeal,
15. Stipulation excluding petition or libel and answer from transcript of record because same are set forth in certificate of jurisdictional issues,

46 16. Certificate of jurisdictional issues,
17. Precipe,
18. Clerk's Certificate.

Said transcript to be prepared is required by law and the rules of this Court, and the rules of the United States Supreme Court. Jan. 27th, 1909.

GOULDER, HOLDING & MASTEN,
Proctors for Petitioner.

47 (Endorsed:) 2435. United States District Court, Northern District of Ohio, Eastern Division. In Admiralty. In the matter of the Petition of Wesley C. Richardson, Lafayette S. Sullivan, and Nancy E. Jones, owners of the Barge "Crete," for Limitation of Liability. Precipe for Transcript on Appeal. Filed Jan. 27, 1909, at — o'clock — M. H. F. Carleton, Clerk.

48 In the District Court of the United States for the Northern District of Ohio, Eastern Division.

No. 2435.

In the Matter of Petition of WESLEY C. RICHARDSON, LAFAYETTE S. SULLIVAN, and NANCY E. JONES, Owners of the Barge "Crete," for Limitation of Liability.

Clerk's Certificate.

I, H. F. Carleton, Clerk of the United States District Court, within and for the Division and District aforesaid, do hereby certify, that the attached and foregoing pages contain a full and true copy of the Petition for Appeal, Notice of Appeal and Waiver of Citation, Order Allowing Appeal, Stipulation as to Transcript, together with the original Certificate of Jurisdictional Issues, and other papers, as they appear of record in my office in the above entitled cause, transmitted in accordance with the Precipe filed herein, a copy of which is made a part of this transcript.

That I have compared said copies with the originals and they are true and correct transcripts therefrom and of the whole thereof.

Witness my official signature and the Seal of said Court, at Cleveland, in said District, this 3rd day of February, A. D. 1909, and in the 133rd year of the Independence of the United States of America.

[Seal of the District Court, Northern Dist. of Ohio.]

H. F. CARLETON,
Clerk U. S. District Court.

Endorsed on cover: File No. 21,512. N. Ohio D. C. U. S. Term No. 716. Wesley C. Richardson, Lafayette S. Sullivan, and Nancy E. Jones, appellants, *vs.* Judson Harmon, receiver of the Toledo Terminal & Railway Company. Filed February 11th, 1909. File No. 21,512.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term 1908.

No. 716.

WESLEY C. RICHARDSON, LAFAYETTE S. SULLIVAN and NANCY E. JONES,

APPELLANTS;

vs.

JUDSON HARMON,

Receiver of The Toledo Terminal & Railway Company,

APPELLEE.

STATEMENT.

The question is of jurisdiction of a District Court of the United States to administer limitation of liability of vessel owners as to debts and liabilities non-maritime in character, involving the question whether limitation of liability under the Act of June 14, 1884, supplementing the Act of 1851 extends to liabilities non-maritime, or whether the "all debts" and "liabilities" therein referred to are only such as would be enforceable in a District Court of the United States sitting in admiralty in a direct proceeding.

The question is general but arises in the present case under these circumstances:

On October 14, 1906, the barge Crete, a merchant vessel of the United States of 2,083 enrolled gross tons, laden with cargo of iron ore, was taken in tow at Ashland by the steamer Roumania and so proceeded to a point off the port of Toledo, Lake Erie, where she was taken in tow by the tug A. W.

Colton, to be towed up Maumee River to her unloading dock in the city of Toledo.

Toledo is located above the mouth of the Maumee River, a navigable river, across which there is a drawbridge of usual form and kind, owned, controlled and operated by The Toledo Terminal & Railway Company, of which Judson Harmon was receiver.

The pier on which the eastern end of the swinging portion of the bridge rested when the draw was closed projected down stream with a sharp, square corner of masonry work on the channel side, which was submerged and obscured and was without protection piling of the usual or of any kind, and which, in consequence of the character of the construction and unprotected condition, was alleged to be a dangerous and unwarrantable obstruction to navigation of the river. In proceeding through the draw, the barge Crete came against the sharp, unprotected corner of masonry, which pierced her bow so that she filled and sank. The vessel was greatly injured and the bridge also sustained damage. The damage to the bridge in all amounted to something like $35,000.00.

On May 25, 1907, appellants herein, two of whom reside in the city of Cleveland in the Northern District of Ohio, at which place the barge Crete then was, filed in the District Court for the Northern District of Ohio, Eastern Division, a libel and petition for "limitation of liability," averring that each was the owner of one-third of said barge Crete; and, after setting up the facts showing the occurrence of the disaster as hereinbefore stated and the pendency of an action in the Common Pleas Court at Toledo against two of the petitioners, to-wit., Wesley C. Richardson and Lafayette

S. Sullivan, for $35.000, and their apprehension of other actions, further averred as follows (p. 19):

> "That said damage was done, occasioned and incurred without the privity or knowledge of your said petitioners or either of them and was without fault on the part of your said petitioners, or either of them, or of the said vessel or those in charge of her navigation, and that the damage done and claims against said vessel on the voyage on which the disaster occurred in the aggregate greatly exceed the value of the owners' interest in said vessel and of her freight pending, and the proportionate share thereof for which, if liable, each of your several petitioners would be called upon to pay, exceeds the amount of the value of said petitioners' several interests in said vessel and her freight pending, and that each of said several owners is subject to suit *in personam* for the sum in the same or in different jurisdictions, and each claims the benefit of the statutes in limitation of liability, to-wit: Sections 4283 and 4285, inclusive, of the Revised Statutes of the United States and of the acts amendatory thereof and supplemental thereto, especially Section 18 of the Act of June 26, 1884."

The petitioners also claimed the right to defend as to any liability for said loss, damage and injury as authorized by the general law and by General Admiralty Rule 56 of this Court.

Pursuant to said petition, appraisers were appointed, who appraised the one-third interest of each of the petitioners in the barge Crete on the termination of the voyage on which the disaster occurred at $3,333.33 1-3, and their separate interest in the freight pending at $830.50 each; and thereupon bond to answer for said sums was furnished by the petitioners,

monition issued in usual form directing that all and every person claiming to have sustained damage by reason of said disaster, *or on the voyage on which it occurred,* should file their claims, before a definite time named, in the District Court (p. 7), and injunction issued against the prosecution or beginning of actions in any other jurisdiction.

Judson Harmon, as receiver, appeared in obedience to said monition and, reserving right to object to the jurisdiction, presented claim for damages amounting to $35,000, and in the fourth and fifth paragraphs excepted to the jurisdiction of the Court in the following terms (p. 13):

> "This claimant further shows to the court that in obedience to said injunction he has refrained from further prosecution of said action in the State Court and, as commanded by said monition, he has filed his answer to said petition, and likewise now presents this his claim to this Court and its commissioner, but he avers that, as he is advised and believes, the subject matter of said claim is not one of admiralty cognizance in the maritime law of the United States and not within the jurisdiction of this Court to enforce or deny, that it is not among the liabilities of shipowners which are limited by the statutes of the United States referred to in said petition, and that his said claim and cause of action are only cognizable at common law in the State Court in which his action therefor was pending when its prosecution was enjoined by process of this Court.
>
> "This claimant further shows to the court that his action in presenting this his claim under the constraint of its injunction and monition as aforesaid is involuntary and that he submits it with the reservation of all rights of exceptions to the jurisdiction of this Court over said claim and cause of

action as hereinbefore reserved and also as set forth in his answer to said petition."

Answer to the claim has not been filed so as to join issue on the question of fault and set up the claim for damage to the Crete. With answer, petition would be filed making the tug Colton, which had the Crete in tow, party-defendant to the claim presented, as authorized by General Admiralty Rule 59. The question of jurisdiction of the Court to entertain the petition was raised as heretofore stated.

The question of jurisdiction was argued and the exceptions to jurisdiction sustained for the reasons set out in the certificate (p. 23):

"On the 24th day of October, 1908, a hearing was had upon said exceptions and the same were sustained, the Court holding that the provision added to the law relating to the liability of owners, masters and ships by the Act of 1884, Statutes at Large, *does not limit the liability of the ship owner in respect of any transaction or subject except those that are within the jurisdiction of the District Court sitting as a court of admiralty*, relating to the navigation of ships and the carrying of freight and passengers; that any cause of action against the owners of a ship which is not cognizable in admiralty may be prosecuted to judgment in any court in which jurisdiction may be had of the parties, like any other action at common law; and that the vessel owned by the defendants and any other property which the defendants may own would be subject to execution in that judgment and to satisfaction *for the full amount, without limitation.*

"In this case it appears that the right of recovery, if any, on behalf of the receiver of the To-

ledo Terminal & Railway Company, is not a right of action arising in admiralty but at common law, so that, suit to recover upon it having been commenced in the Common Pleas Court of the State, that Court has jurisdiction to try the case and this Court has no jurisdiction in respect to the limitation of liability upon the evidence growing out of the fact that the accident resulted from the collision of a vessel with the pier of the bridge."

The question presented by the certificate of the District Court is (p. 23):

"Has the District Court of the United States jurisdiction to entertain a libel or petition for limitation of liability of the owners of a vessel against claims for non-maritime damages or any claim for any liability or debt which is not within the admiralty and maritime jurisdiction of such Court?"

The argument will be presented in two parts:

1. The "debts" and "liabilities" within the Acts.
2. The District Court has jurisdiction to administer the Acts.

I.

We set out in full so much of the statutes as have any bearing on the question.

Sec. 1, c. 43, March 3, 1851, provides:

"No owner of any vessel shall be liable to answer for or make good to any person any loss or damage which may happen to any merchandise whatsoever, which shall be shipped, taken in, or put on board any such vessel, by reason or by means of any fire happening to or on board the vessel, unless such fire is caused by the design or neglect of such owner."

9 St., 635; Sec. 4282, R. S.

Sec. 3, c. 43, of the same act:

"The liability of the owner of any vessel, for any embezzlement, loss, or destruction, by any person, of any property, goods, or merchandise, shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter or thing, lost, damage, or forfeiture, done, occasioned, or incurred, without the privity, or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel, and her freight then pending."

9 St., 635; Sec. 4283.

Sec. 4, c. 43, of the same act:

"Whenever any such embezzlement, loss, or destruction is suffered by several freighters or owners of goods, wares, merchandise, or any property whatever, on the same voyage, and the whole value of the vessel, and her freight for the voyage, is not sufficient to make compensation to each of them, they shall receive compensation from the owner of the vessel in proportion to their respective losses; and for that purpose the freighters and owners of the property, and the owner of the vessel, or any of them, may take the appropriate proceedings in any court, for the purpose of apportioning the sum for which the owner of the vessel may be liable among the parties entitled thereto."

9 St., 635; Sec. 4284.

This section was amended by Sec. 1, c. 69, of the Act of February 27, 1877, by striking out the words "and for that purpose the freighters and" the word "owner," and inserting the word "owners."

Sec. 4, c. 43, of the Act of March 3, 1851, provided:

"It shall be deemed a sufficient compliance on the part of such owner with the requirements of this title relating to his liability for any embezzlement, loss, or destruction of any property, goods, or merchandise, if he shall transfer his interest in such vessel and freight, for the benefit of such claimants, to a trustee, to be appointed by any court of competent jurisdiction, to act as such trustee for the person who may prove to be legally entitled thereto; from and after which transfer all claims and proceedings against the owner shall cease."

9 St., 635; Sec. 4285.

Secs. 5 and 6 provided:

"The charterer of any vessel, in case he shall man, victual and navigate such vessel at his own expense, or by his own procurement, shall be deemed the owner of such vessel within the meaning of the provisions of this title relating to the limitation of the liability of the owners of vessels; and such vessel, when so chartered, shall be liable in the same manner as if navigated by the owner thereof."

9 St., 635; Sec. 4286.

Sec. 6 provides:

"Nothing in the five preceding sections shall be construed to take away or affect the remedy to which any party may be entitled, against the master, officers, or seamen, for or on account of any embezzlement, injury, loss, or destruction of merchandise, or property, put on board any vessel, or on account of any negligence, fraud, or other malversation of such master, officers, or seamen, respectively, nor to lessen or take away any responsibility to which any master or seaman of any vessel may by law be liable, notwithstanding such

master or seaman may be an owner or part owner of the vessel."

9 St., 635; Sec. 4287.

Sec. 7 of the Act of March 3, 1851, provided that the previous sections relating to limitation of liability should not apply "to the owners of any canal boat, barge, or lighter, or to any vessel of any description whatsoever used in river or inland navigation."

June 26, 1884, "an act to remove certain burdens on the American marine and encourage the American foreign carrying trade, and for other purposes," was passed. Sec. 18 provided:

> "The individual liability of a ship owner, shall be limited to the proportion of any or all debts and liabilities that his individual share of the vessel bears to the whole; and the aggregate liabilities of all the owners of a vessel on account of the same shall not exceed the value of such vessel and freight pending: *Provided*, That this provision shall not affect the liability of any owner incurred previous to the passage of this act, nor prevent any claimant from joining all the owners in one action; nor shall the same apply to wages due to persons employed by said ship-owners."

23 St., p. 57.

Thereafter, Sec. 7 of the Act of March 3, 1851, which had been amended in 1875, so as to exclude canal boats, etc., from the benefits of limitation as shown above and June 26, 1884, by the provision just before set out herein, extending the limitation to "any or all debts and liabilities," was amended to its present form June 19, 1886, defining the character of vessels the owners or charterers of which are entitled to the benefits of the limitations or exemptions conferred by the Acts:

"The provisions of the seven preceding sections, and of section eighteen of an act entitled 'An act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade, and for other purposes,' approved June 26, 1884, relating to the limitations of the liability of the owners of vessels, shall apply to all sea-going vessels, and also to all vessels used on lakes or rivers or in inland navigation, including canal boats, barges and lighters."

Sec. 4289.

There are other statutes giving exemptions from liability for damages to cargo under certain conditions, where the damage arises from faults or errors in the navigation or management of the vessel (Act of February 13, 1893, commonly called Harter Act), but their provisions are not relevant to the questions here considered.

Under what may be called the original act (1851), it will be noted that by Sec. 4281, the owner is not liable as carrier:

(a) "In any form or manner" for loss of platina, gold, gold dust, silver, etc., if the shipper has failed, at the time of lading to give "written notice of the true character and value thereof, to be entered on the bill of lading;" and

(b) When such notice has been given, then the liability does not extend "beyond the value and according to the character thereof so notified and entered."

No other character of damage or liability is mentioned.

Section 4282 gives total exemption from liability for damage by fire, occurring without the "design or neglect" of the owner of the ship, to merchandise, "shipped, taken in, or put on board" any such vessel.

Section 4283 provides that liability of the owner shall not exceed the amount or value of the interest in the vessel and her freight then pending, for

(a) embezzlement, loss, etc. ,of property, goods, or merchandise put on board; or,
(b) loss, damage or injury by collision;
(c) "for any act, matter, or thing, lost, damage, or forfeiture, done, occasioned, or incurred,"

without the privity or knowledge of the owner, etc.

The original law had to do only with liabilities arising in tort, but Sec. 18 of the Act of June 26, 1884, extended it to an owner's

(a) "proportion of any or all debts and liabilities that his individual share of the vessel bears to the whole;" and
(b) "the aggregate liabilities of all the owners of a vessel on account of the same shall not exceed the value of such vessel and freight pending,"

with the proviso:

(c) that it should not affect liabilities incurred previous to the passage of the Act;
(d) all owners may be joined in one action;
(e) does not apply to wages due persons employed by the owners.

While the Act of 1884 makes no reference to the Act of 1851, the concensus of judicial opinion is that it is to be regarded as an amendment or as supplemental thereto, so that the whole is to be construed together; that Congress so intended is evidenced by Sec. 4 of the Act of June 29, 1886, (4289 R. S.), where, in defining the classes of vessel property, the owners of which are entitled to the benefits of the statutes, the original Act of 1851 (applying only to torts)

and Sec. 18 of the Act of June 26, 1884, (covering any and all debts and liabilities), are treated as one act.

> "The section (Sec. 18) does not purport to repeal any pre-existing law, but is legislation *in pari materia* with the Act of 1851."
>
> *The Republic*, 61 Fed., 109-113 (2nd C. C. A.).

This Court has referred to the Act of 1884 as an "amendment" to the Act of 1851.

O'Brien v. Miller, 168 U. S., 287-303.

The original act applied only to claims for loss or damage, etc., arising without the "privity or knowledge of the owner;" Sec. 18 of the Act of 1884 contains no such limiting terms, but, apart from the *proviso* as to existing obligations and wages, is as broad as language can make it: "any or *all* debts and liabilities."

Under the law, however, as it stands, various courts have held that the exception contained in the original Act: *i. e.*, that the claim must be one arising without the privity or knowledge of the owner, applies as well to claims *ex contractu*, as to any other character of claim which may be otherwise limited against under Sec. 18 of the Act of 1884.

This Court has not so decided.

Under the Act of 1851, it has been held that a non-maritime damage; *i. e.*, one not within the admiralty and maritime jurisdiction in a direct proceeding on the claim, could not be limited against.

This Court has never so held, nor has any court (within our knowledge) so held where the cause arose subsequent to the enactment of Sec. 18 of the Act of 1884, and the question was considered.

In the original Act there was a particular designation of the character of damage against which limitation could be had, and each particular designation was that of a claim within the jurisdiction of the admiralty courts. This was followed (Sec. 4283) by a general designation of "any loss, damage or injury by collision, or for any act, matter, or thing lost, damage, or forfeiture, done, occasioned or incurred," etc., so that, following ordinary rules of construction, the general designation only relates to the class and character of matters covered by the particular designation. The language of the amendment of 1884 is not subject to this rule.

That the general maritime law gave limitation of liability to owners of vessel property, to the end that merchants might be encouraged to invest in maritime commerce, is matter of common knowledge. It has been the subject of much consideration by text writers and in opinion, but Judge Ware's exposition in

The Rebecca, 1 Ware, 187; F. C. 11619,

may be taken, for all general purposes, as leaving "little to be desired on the subject."

Norwich Co. v. Wright, 13 Wall., 104-116.

Judge Ware, among other things, said:

> "The custom which exempted the owners from personal responsibility for the acts of the master, extended, as has been observed, as well to obligations arising *ex contractu* as *ex delicto*. No distinction was made between them, and on the principles upon which the custom stood in its origin and in the time of the Consulate of the Sea, there does not appear to be any just ground for distinction."

And speaking of tortious acts, he says:

> "The rule which holds the principal respon-

sible for the tortious acts of his agent, will in its terms include the master of a vessel. But as it is a rule founded merely in expediency, and not in natural justice, except so far as the principal has derived a benefit from such acts, public policy must also determine to what cases the rule shall extend. The general sense of the commercial world seems to be satisfied with holding the owners of vessels responsible to the extent of their interest in the ship, and by abandoning the ship and freight to the creditors, they are discharged. This has for a long period, if I am not mistaken, been the law of all the maritime nations of the continent of Europe, with respect to damages arising from the wrongful and illegal acts of the master. It, however, has never been acknowledged in England or in this country, as customary law, though it seems that the sense of the commercial community is in favor of this limitation of the owner's responsibility for the tortious acts of the master."

In that case (1831) Judge Ware allowed the limitation of the maritime law against a claim for cargo damage.

Justice Bradley, speaking for this court, said:

"In the case of the *Norwich Company v. Wright* (13 Wall., 104), we had occasion to state that the general maritime law of Europe only charges innocent owners to the extent of their interest in the ship for the acts of the master and crew, and that if the ship is lost their liability is at an end. This rule is laid down in several places in the ancient code called the *Consolato del Mare*, and in many other authorities which are quoted and commented upon by Judge Ware in the case of *The Rebecca* (Ware, 187); and it is specifically formulated in various national ordinances and codes, amongst others, in the Marine Ordinance of Louis

XIV., adopted in 1681. Emerigon, in his treatise of Contracts *'a la Grosse,'* says: 'The owners of the ship are bound *in solidum* by everything which the captain does in the course of the voyage for the promotion of the voyage * * * But this action *in solidum* does not exist against the owners farther than according to the interest which they have in the body of the ship; hence, if the ship perish, or if they abandon their interest, they are no longer liable for anything. It is thus that the maritime laws of the Middle Age have directed; such is the law which is observed in the North; and such is the regulation of our own ordinance;' and he refers to the *Consolato* and other authorities. The text of the French ordinance, which is regarded as merely formulating the old customary law, is as follows: 'The owners of ships are responsible for the acts of the master, but they become discharged therefrom by abandoning the ship and freight.'

"But whilst this is the rule of the general maritime law of Europe, it was not received as law in England nor in this country until made so by statute. The English statutes, indeed, have not yet adopted, to its full extent, the maritime law on this subject. They make the owners responsible to the value of the ship and freight at the time of the injury (that is, immediately before the injury), although the ship be destroyed, or injured by the same act, or afterwards in the same voyage; *whilst our law adopts the maritime rule of graduating the liability* by the value of the ship after the injury, as she comes back into port, and the freight actually earned; and enables the owners to avoid all responsibility by giving up ship and freight, if still in existence, in whatever condition the ship may be; and, without such surrender,

subjects them only to a responsibility equivalent to the value of the ship and freight as rescued from the disaster."

The Scotland, 105 U. S., 24-28.

The question as to the true limits of our maritime law is judicial.

"But what the law is within those limits, assuming the general maritime law to be the basis of the system, depends on what has been received as law in the maritime usages of this country, and on such legislation as may have been competent to affect it.

"To ascertain, therefore, what the maritime law of this country is, it is not enough to read the French, German, Italian, and other foreign works on the subject, or the codes which they have framed; but we must have regard to our own legal history, constitution, legislation, usages, and adjudications as well. The decisions of this court illustrative of these sources, and giving construction to the laws and Constitution are especially to be considered; and when these fail us, we must resort to the principles by which they have been governed.

"But we must always remember that the court cannot make the law, it can only declare it. If, within its proper scope, any change is desired in its rules, other than those of procedure, it must be made by the legislative department. It cannot be supposed that the framers of the Constitution contemplated that the law should forever remain unalterable. Congress undoubtedly has authority under the commercial power, if no other, to introduce such changes as are likely to be needed. The scope of the maritime law, and that of commercial regulation are not coterminous, it is true, but the latter embraces much the largest portion of ground

covered by the former. Under it Congress has regulated the registry, enrollment, license, and nationality of ships and vessels; the methods of recording bills of sale and mortgages thereon; the rights and duties of seamen; the limitations of the responsibility of shipowners for the negligence and misconduct of their captains and crews; and many other things of a character truly maritime."

The Lottawanna, 21 Wall., 558-576.

That the purpose of the law was to foster shipping has been pointed out and looked to in the interpretation and application of these statutes in many cases.

So in

Providence & N. Y. S. S. Co. v. Hill, 109 U. S., 578,

Mr. Justice Bradley said (p. 589) that the Act was passed for the benefit of shipping interests and as *making the general maritime law on the subject the law of this country,* but, while its value and importance to maritime commerce can hardly be over-estimated, nevertheless its practical value depends largely upon its administration; and, if administered in the spirit of fairness with a view of giving ship owners the full benefit of the immunities intended, it is of the last importance to shipping interests, but if administered with tight and grudging hand, construing the various causes against the ship owner, "the law will hardly be worth the trouble of its enactment."

The hazards to which a ship, away from the care and oversight of her owner, in strange ports and waters, must necessarily be subjected, imperatively demand now, as for centuries past, a definite limitation of liability. Otherwise though only now decadent, it will (under our flag) disappear.

The question of jurisdiction we do not consider until the second part of this brief, since we believe it necessary for the determination of that question that it first be determined whether or not the damage in the particular case is of a character which entitles the owner of the offending property to a limitation. We call attention, however, to the fact that the Phenix Insurance Co. case, while decided in 1886, was on a cause of action arising in 1880, and no reference whatever is made to the amendment of 1884.

In that case, it was held that a limitation against damage by fire on shore could not be limited against in admiralty although the fire was negligently caused by a ship.

Ex parte Phenix Ins. Co., 118 U. S., 610-625.

Mr. Justice Bradley, in delivering opinion in

The Maine v. Williams, 152 U. S., 122,

after calling attention to the general doctrine of liability as administered by the maritime nations of the world, said that the attention of Congress seems not to have been called to the desirability or necessity of similar limitations in this country until the attention of the shipping public was challenged by the decision of this Court in *New Jersey Steam Navigation Co. v. Bank*, 6 How., 344, wherein an owner, notwithstanding a special contract limiting his liability, was nevertheless held to liability for loss of specie by fire on a steamboat, and as a result "of the uneasiness produced among shipowners by this decision, and for the purpose of putting American shipping upon an equality with that of other maritime nations, Congress in 1851 enacted what is commonly known as the "Limited Liability Act," etc.

After various interpretations had been placed upon the original Act it was held to extend only to obligations arising *ex delicto*, and by reason of the language employed,

there was at least some doubt as to whether it could be applied except to damages to floating property or the goods on board the same, or to liabilities squarely within the jurisdiction in admiralty as orginal causes. The matter was again brought to the attention of Congress and the Act of 1884 passed.

The language of the Act of 1884 is as broad as it can be made. It contains no limitation that the debt or liability shall be one created without the privity or knowledge of the person claiming the benefit of limitation, and it creates a further special limitation by removing liability *in solido*, leaving owners responsible only for their proportionate amount. We shall show that it was the intent of Congress by the amendment of 1884 to remove all exceptions save those named in the proviso. This is evidenced further by the fact that it was proposed, during the course of the passage of the bill, to incorporate into this section the words *"without the privity and knowledge of the owner,"* and, after due consideration, that language was rejected as being contrary to the intent of Congress.

We are not arguing at this time that the decisions of the lower courts holding that the debt or liability cannot be limited against if it was incurred with the privity and knowledge of the owner, as that question is not involved or necessary to the determination of this case, but here our contention is that it is not limited in its application to claims which would support a direct proceeding in the admiralty on the claim but extends to any or all debts and liabilities.

CONGRESS INTENDED ALL DEBTS AND LIABILITIES ON ACCOUNT OF THE SHIP, WHETHER MARITIME OR NON-MARITIME AND WHETHER CREATED WITH OR WITHOUT THE PRIVITY OR KNOWLEDGE OF THE OWNER, TO BE WITHIN THE LIMITATION.

An examination of the Congressional Record on the point in question shows the following:

Bill to remove certain burdens from American shipping; page 976, Vol. 15, Part 1, Congressional Records:

MR. FRYE: Section 18 limits the individual liability of a ship-owner for any and all debts and liabilities to the proportion that his individual share of the vessel bears to the whole. That is not so great a change as appears on the face of the law. By statute today any shareholder in a vessel is liable for no more than the value of the share for any tort of the master or in case of collision or in any other way except by contract. But those provisions of the law are not generally understood. They follow the English and the French law almost word for word. There is today a feeling among the capitalists of this country that it is exceedingly dangerous to put capital into a ship where there may be twenty owners and only one of them really a man of wealth, and he responsible for the entire debt contracted. The English have the same limited liability provided for in this section, only in another form. They have a general law of "limited liability," by which any dozen men desiring to build a ship or a steamer can simply incorporate themselves for that single purpose and then their liability under that act of incorporation shall be the owner's share of the vessel and no more. The bill which we report does the same thing, only in an-

other form. It is believed that it will remove a difficulty under which our capitalists have labored, will give them courage to invest in ships, and will do a great deal more towards encouraging ship-building and ship-owning than really the law itself which we report would authorize.

At page 3650, Part 4:

MR. FRYE: Section 18 touches the individual liability of ship-owners. Today, except as otherwise provided by statute, in case of collisions, torts, embezzlements, &c., the American ship-owners are simply copartners. A dozen in the ownership, each a twelfth, or more or less, as ships are owned in our country, are copartners in the law, and in any contracts that are made, no matter what they may be, each one is held for the whole. This deters many men of wealth from undertaking to build ships. It will be remembered that we are not copartners in the ordinary association of such. It will be remembered that my share of the ship can be disposed of without the consent of the others. At any day, at any moment, I can register the bill of sale, and I am no longer a member of the copartnership, and so every share of the ship may be disposed of without the consent of the other owners. It must be understood, too, that we have no more control of our ships as ship-owners than the stockholders in a great factory have; not so much, because our ship is out of our sight three-fourths of the time. We relieve stockholders in these corporations from any liability beyond their stock simply because they are conducted by agents and superintendents; but your ship is controlled by agents and superintendents, and those agents are out of your sight and out of your reach for months at a time. I believe that that liability should be limited, and it will be a great

inducement and encouragement to men of wealth to invest in ships.

MR. BROWN: To what is the liability limited?

MR. FRYE: To the extent of the amount owned, the same as in a corporation.

At page 3970-1:

MR. FRYE: I move to amend section 18 by inserting in the first line of the section, after the word "Ship-owner," the words "incurred without his personal consent or privity."

MR. HOAR: How will it read then?

THE CHIEF CLERK: That the individual liability of a ship-owner, incurred without his personal consent or privity, shall be limited to the proportion of any or all debts and liabilities that his individual share of the vessel bears to the whole.

MR. MILLER, of New York: This is a remarkable change. As I understood the sentiment of the committee, it was really to make the ownership in all sea-going vessels a limited-liability company in which every individual was liable for only his share. That was notice to the whole world that nothing but the ship was holden. Now, you are going to bring in a clause which would lead to interminable litigation, for some of the owners of the ship will be engaged in the management, they will know in regard to the affairs, and they will be held personally liable for everything, while other owners not immediately connected with the management will escape. The burden will all fall on one or two men, if there is any burden.

It seems to me that in order to encourage the investment of capital in ship owning we have to do substantially this: We have to make each ship company a limited-liability company, and that is notice to everybody. If that is

understood to be our law everybody who trusts a ship does it with a full knowledge that there is nothing back of it save the ship itself. Therefore no injustice will be done to anyone. But if the amendment of the Senator from Maine prevails there will be two classes of owners in ships; one class, who will have control of the management, will be responsible for everything; and the other class will then take the position of silent partner and will not be responsible.

MR. McPHERSON: Will the Senator from New York yield to me for a moment?

MR. MILLER, of New York: Certainly.

MR. McPHERSON: Let us carry out the proposition of the Senator from New York to its logical conclusion. Suppose, for instance, two ships on the ocean or in the port of New York sail about the harbor or elsewhere. One of them collides with the other, is entirely at fault, and both ships are sunk. How are the injured owners of the ship that has been sunk by reason of the fault of the other, which is also sunk by the same collision, to get redress? Where are they to seek redress? I ask the Senator from New York that question.

MR. MILLER, of New York: I beg the Senator's pardon; my attention was distracted and I did not hear his question.

MR. McPHERSON: I will state it again. Where two ships collide and one ship is at fault and both are sunk in the collision, I wish to know where redress is to be sought? Suppose the ship not at fault is worth six times as much as the other, where is the redress?

MR. MILLER, of New York: There will be no redress beyond the value of the ship.

MR. McPHERSON: The ship is sunk; what is her value then?

MR. MILLER, of New York: She would get the marine insurance, I suppose.

MR. McPHERSON: Suppose she is not insured?

MR. SHERMAN: It seems to me this is a much more important matter than the Senator from New York thinks. If somebody has been at fault in the management of a ship, there ought to be a liability certainly to the full extent of the man's property. There ought to be a liability criminal as well, and there ought to be a liability personal to fully the value of the ship lost. If this bill is in a condition where there is no liability for torts or wrongs committed by the managers and controllers of a vessel, I think it is an important consideration. For the ordinary hazards of the sea, for the ordinary accidents of life, the owners of a ship may not be held responsible; but if accidents and torts have been brought about by their wrongful action, they ought clearly to be responsible. It seems to me that if the bill does not provide for that it ought to be amended.

MR. MILLER, of New York: For any wrong committed, any negligence, or anything of that kind, the parties would of course be held liable under the law. This does not affect that in my judgment.

MR. CONGER: This provision in the bill follows the usual law of all the European nations, that in the case of damage to a vessel the party without wrong of his own shall be liable only for the value of the vessel and the freight.

MR. SHERMAN: Suppose a tort?

MR. CONGER: This provision does not apply to that.

MR. HOAR: Will the Senator pardon me while I read a sentence from the Revised Statutes?

> "Sec. 4283. The liability of the owner of any vessel, for any embezzlement, loss, or destruction by any person, of any property, goods or merchandise, shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, lost, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel, and her freight then pending."

The liability is not to the value of the vessel, but it is the value of the interest of such owner.

MR. CONGER: The owner's interest is the interest in the value of the vessel before the damage was committed. That has been so construed by the courts universally. It is the interest in the vessel just prior to the time when the collision took place.

MR. HOAR: Now, if the Senator will pardon me, this section is "That the individual liability of a ship owner shall be limited to the proportion of any or all debts and liabilities"—not the particular debt, but all existing debts or liabilities—"that his individual share of the vessel bears to the whole." Is not that an almost impossible burden to put upon the claimant to prove the individual interest? Is he to have the duty of ascertaining how many debts there are and what proportion this man's interest bears? Is there any such rule as that?

MR. CONGER. Would it not be unjust to the owner if he should be mulcted over and over again, beyond the value of his interest?

MR. HOAR: Then abolish individual ownership altogether.

THE PRESIDENT *pro tempore:* Senators will please suspend. The Chair thinks it his duty to remind the Senate that by unanimous consent debate was to terminate at 5 o'clock on this bill and amendments. The question is on the amendment proposed by the Senator from Maine.

* * * * * * * * *

MR. VEST: The intent is to protect the ship-owner when the captain is in control of the ship thousands of miles away. We did not suppose he should give bonds to the extent of a million of dollars, but only to the amount of his proportionate interest or ownership in the vessel, and of course as he is there individually and knows where the damage is committed and is a party to it, he ought to be held to the full amount of the damages.

MR. MILLER, of California: Why is not the provision in the Revised Statutes as it stands now sufficient?

MR. VEST: It does not apply to contracts at all, only to torts.

Page 3972-3. In H. R. bill 2228, the first nine sections of the act to remove a burden from American shipping was identical with Senate bill 1448. The Senate amended H. R. 2228 by striking out certain sections of the House bill and amending it by inserting certain sections of the Senate bill, one of which was section 18 as reported upon by the committee and reads as follows:

> "Sec. 18. That the individual liability of a ship-owner incurred without his personal consent or privity shall be limited to the proportion of any or all debts and liabilities that his individual share of the vessel bears to the whole; and the aggregate

liabilities of all the owners of a vessel on account of the same shall not exceed the value of such vessels and freight pending: Provided, That this provision shall not affect the liability of any owner incurred previous to the passage of this act, nor prevent any claimant from joining all the owners in one action; nor shall the same apply to wages due to persons employed by said ship-owners."

At page 3974 the Senate passed the Senate bill 1448, House bill 2228 as amended by the Senate. The bill as passed was then referred to conference committees of both houses.

Page 5440:

A message from the House of Representatives, by Mr. Clark, its Clerk, announced that the House had concurred in the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate bill (H. R. 2228) to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade.

Mr. Frye submitted the following report:

* * * * * * * * *

That the House recede from its disagreement to so much of amendment numbered 4 as proposes a new section numbered 18, and agree to said section as proposed by the Senate with an amendment striking out the words "incurred without his personal privity or consent," in the first and second lines; and the Senate agree to the same.

Page 5452:

It will be noted that a proposition was made by Senator Frye to include the words "incurred without his personal

consent or privity," and that proposition to so amend section 18 failed and the bill passed in the form hereinbefore quoted. While one honorable Senator was mistaken as to the time at which this court has held the value was to be taken, he placing it before the disaster, as had been held in Massachusetts, instead of at the termination of the voyage, and while another seemed to entertain the belief, contrary to the decisions of this Court, that the insurance money could not be retained, the purpose of the amendment so disclosed was to enlarge the scope of claims against which an owner could limit his liability, or, as stated by one Senator, to make the ship herself answerable only to her own ability, as would be the case of all claims against a corporation.

Almost since a merchant marine has existed in civilized nations, the ship herself has been treated as a sentient thing, liable for her own wrong in whosoever hands she may be, liable for her own contractural obligations and, under the general maritime law, the liability ended with the loss or surrender of the ship and freight.

As this Court has said:

> "She acquires a personality of her own; becomes competent to contract, and is individually liable for her obligations, upon which she may sue in the name of her owner, and be sued in her own name. Her owner's agents may not be her agents, and her agents may not be her owner's agents."
>
> *Tucker v. Alexandroff*, 183 U. S., 438.

While the general purpose of the legislation was to make the general maritime law a part of the maritime law of this country, this court held that, as that had been done by virtue of statutes, the law must be looked to and applied as statutory law, and while plain language of an act may not

be disregarded to give effect to an undisclosed intent, where the language employed admits of construction which will give force to the legislative intent, it should be done.

This Court has referred to the Congressional records to ascertain the legislative intent where the meaning is in controversy. It was done on the question of taxation of vessel property, where it was sought to put a limitation upon a federal statute contrary to the immediate language of the act itself.

Ayer & Lord Co. v. Kentucky, 202 U. S., 409-427.

And again in dealing with the Harter Act, so-called (February 13, 1893), exempting owners of vessel property from liability for damage to cargo occurring in certain ways, and in fixing the meaning of Section 3 of said act, this Court had recourse to the Congressional proceedings.

The Delaware, 161 U. S., 459-472.

If the language of the Act alone be looked to, no limitation is found beyond that contained in the proviso; if the legislative intent is looked to, no limitation whatever is found, but indeed an intent to include certain debts and liabilities which the lower courts have since excluded.

This Court has only said in referring to the amendment:

> "The language is somewhat vague, it is true; but it is possible that it was intended to remove all doubts of the application of the limited liability law to all cases of loss and injury caused without the privity or knowledge of the owner."

Butler v. Boston S. Co., 130 U. S., 527-554.

For a damage done to a bridge or to a dock in collision with a vessel a maritime lien does not exist against the ves-

sel and this claim is not enforceable in a direct proceeding in the admiralty. For damage sustained at the same time by the vessel, there is no lien against the bridge or dock but there is a liability against the owner or one in control of such bridge or dock or responsible for its improper location, construction or management, and this claim is enforceable in a proceeding *in personam* in the admiralty.

The liability of the owner or charterer of the vessel to the owner of the dock or bridge is a liability arising by mere virtue of ownership or of charterer in possession as definitely as if the damage done had been the destruction of life on the water or the doing of the damage to some other water craft. A recent authority said, referring to this law as it stands:

> "The individual liability of a ship-owner is limited to the proportion of any or all debts or liabilities that his individual share of the vessel bears to the whole, and the aggregate liabilities of all the owners of a vessel on account of the same shall not exceed the value of such vessels and freight pending—provided that this provision shall not affect the liability of any owner incurred previous to the passage of this act, or prevent any claimant from joining all the owners in one action, nor shall the same apply to wages due to persons employed by said ship-owners.
>
> "The liability of ship-owners can be limited only as to such losses or damages as occurred on the last voyage preceding the filing of the petition, or on the voyage on which the vessel was lost. The statute of limited liability includes damage by collision to other vessels and cargoes as well as to the vessel's own cargo, claims for personal injuries and loss of life sustained, and any damage inflicted by

collision upon another object, *whether the thing injured was situated on the water or on the land."*

Maritime Law, Saunders, (2nd Ed.), p. 452.

To give effect to the language of the Acts, to carry out the legislative intent, to foster the investment of capital in maritime ventures, must be set aside, to hold that any or all debts or liabilities referred to in the statutes without limitation as to character, *and without designation by the Act as* to the court in which it should be enforced, must nevertheless be confined to maritime torts and contracts, such only as are enforceable in a *direct* proceeding in the admiralty.

It will be borne in mind that the question involved here affects every owner of American vessels, the owner of every foreign vessel, regardless of nationality, which comes within the territorial jurisdiction of the United States, and every marine insurer thereon as well. Our statute being an adoption of the general maritime law, the nationality of the vessel or the place of injury is immaterial where the courts of the United States are resorted to.

The Scotland, 105 U. S., 24.

The Scotland, 118 U. S., 507.

The Great Western, 118 U. S., 520.

If the liability does not extend to damage done to bridges, abutments and the like, then as to such damages the individual owner of the smallest part remains liable *in solido* for the entire damage accomplished, and it would necessitate a readjustment in ownership and insurance. While such consideration would not influence the decision of this tribunal in any part, it is of such consequence that this primal question ought not to be left in doubt.

II.

THE DISTRICT COURT OF THE UNITED STATES HAS AUTHORITY TO GIVE THE BENEFIT OF THE LIMITATION OF MARITIME AND NON-MARITIME LIABILITIES ALIKE.

The language of the Act does not make any exception as to the character of claims beyond those then existing, wages, etc. The purpose of the legislation is to foster water-borne commerce and encourage the investment of moneys in shipping. To effectuate that purpose, it was and is as needful to give the benefit of limitation as to damage done to a bridge in collision as to damage done to another ship. The only reason that has or can be presented against bringing such liabilities within the limiting benefits of the statutes is that they would not be within the jurisdiction of the District Court (sitting in admiralty) in a direct proceeding, and, as this Court has said that no other Court is competent to give the relief granted by the statute, it is argued that as to such damages the statute is ineffective.

Where there are a number of claims, maritime and non-maritime, it would no longer be questioned that a District Court of the United States could entertain a petition for limitation of liability and distribute the proceeds. Having jurisdiction over the maritime claims, it would exercise an ancillary authority to administer the proceeds to non-maritime claimants as well: *it would administer the entire fund.*

If it be that the non-maritime claim cannot be limited against, the authority of the court would be limited to disposing of any balance of proceeds after payment in full of the maritime claims, leaving to other claimants the right to pursue the owner in any other jurisdiction where service could

be had for the bálance. If, however, there were a balance remaining in the registry after payment of maritime claims, a District Court would, before returning this to the petitioner, require payment of other claims filed and properly proven, whether maritime or not.

It has long been established by this Court that a District Court, sitting in admiralty, will exercise jurisdiction (ancillary) over claims on which a direct proceeding in the admiralty would be entirely outside of the question.

> "This application by petition is frequently entertained for proceeds in the registry, in cases where a suit in the admiralty would be wholly inadmissible."

Schuchardt v. Angelique, 19 How., 239-241.

It has no jurisdiction over a vessel mortgage,

Bogart v. The John Jay, 17 How., 399,

but it will be entertained under petition against proceeds;

The J. E. Rumbell, 148 U. S., 1;

or an accounting between part owners,

Duryee v. Elkins, 1 Abb. Ad., 529; F. C. 4197,

The C. C. Trowbridge, 14 Fed., 874;

but it will accomplish such accounting when the fund is in possession.

Davis v. Child, et al., 2 Ware, 78; F. C., 3628,

The H. E. Willard, 52 Fed., 387-388.

This principle, that of taking cognizance of claims as ancillary where a direct proceeding could not be entertained, where they even depend upon laws of other jurisdictions, had been recognized by this Court as late as

The Hamilton, 207 U. S., 398-406.

In that case, one for limitation of liability, a vessel hailing from a State which could not give her nationality or control

her at all as an instrument of commerce, was nevertheless held to be so far a part of the territory of that State that a right of recovery in a death case was supported although it occurred on the high seas, and the legal representative was allowed to participate under the statute, although it could not otherwise be "administered by a maritime court."

This court has said of the District Court:

> "It is a maritime court instituted for the purpose of administering the law of the sea."
>
> *N. J. S. N. Co. v. Merchants' Bank*, 6 How., 392.

The judicial power of the federal government as to maritime causes is very broad:

> "All cases of admiralty and maritime jurisdiction."

It would, perhaps, not further the present argument to give the detail of the development of the jurisdiction as now exercised. As to rivers, it is now fixed that

> "those rivers must be regarded as public, navigable rivers in law which are navigable in fact. * * * And they constitute navigable waters of the United States within the meaning of the Acts of Congress, in contradistinction from navigable waters of the states, when they form in their ordinary condition by themselves, or by uniting with other waters, a continued highway over which commerce is or may be carried on with other states or foreign countries in the customary modes in which such commerce is conducted by water."
>
> *The Daniel Ball*, 10 Wall., 557-563.

As to torts, the jurisdiction

> "does not depend upon the fact that the injury was inflicted by the vessel, but upon the locality—the high seas, or navigable waters where it occurred. Every species of tort, however occurring, and

whether on board a vessel or not, if upon the high seas or navigable waters, is of admiralty cognizance."

The Plymouth, 3 Wall., 20-36.

Cleveland Terminal R. R. Co. vs. S. S. Co., 208 U. S., 316.

As to contracts, the subject-matter determines the question:

"The admiralty jurisdiction, in cases of contract, depends primarily upon the nature of the contract, and is limited to contracts, claims, and services, purely maritime, and touching rights and duties appertaining to commerce and navigation."

People's Ferry Co. v. Beers, 20 How., 393-401.

These are the broad lines laid down by this Court for determining whether a cause is of admiralty and maritime jurisdiction. They are general and adaptable.

As to torts, where damage was done to a beacon *attached to realty and a part thereof by the ordinary criteria of the common law,* this Court nevertheless sustained jurisdiction, saying:

"it seems more arbitrary than rational to treat attachment to the soil as a peremptory bar outweighing the considerations that the injured thing was an instrument of navigation and no part of the shore, but surrounded on every side by water, a mere point projecting from the sea."

The Blackheath, 195 U. S., 361-365.

The moving argument in that case, as we view it, was that the beacon was an aid to navigation, having no other use or purpose, from "ancient times subject to the admiralty." The court did not disturb its decision in *The Plymouth,* 3 Wall.,

20. It recognized, however, that the language of the constitutional grant included objects within the ancient jurisdiction of the admiralty, although fixed permanently to the realty and therefore without the jurisdiction under ordinary canons. Justice Brown, in concurring (368), took the decision as recognizing the principle of the English Admiralty Court Jurisdictional Act of 1861, extending the jurisdiction "to any claim for damages by any ship," and most practitioners and owners would be pleased if it were so. This Court, however, did not take that view. (208 U. S., 320.)

And as to contracts. The contract of insurance is made on land and all settlements thereunder are made on land, and is so personal to the owner that any recovery thereon need not be accounted for in limitation proceedings, as it

"is a collateral contract, personal to the owner."

The City of Norwich, 118 U. S., 468-495.

On the question of jurisdiction, however, after pointing out some similitude between contracts of insurance and affreightment, the court said:

> "And then the contract of insurance, and the rights of the parties arising therefrom, are affected by and mixed up with all the questions that can arise in maritime commerce,—jettison, abandonment, average, salvage, capture, prize, bottomry, etc.
>
> "*Perhaps the best criterion of the maritime character of a contract is the system of law from which it arises and by which it is governed.*"
>
> *Ins. Co. v. Dunham*, 11 Wall., 1-31.
>
> *De Lorio v. Boit.*, 2 Gall., 398; F. C. 3776.

When it be taken into account that it is a principle of *maritime law* with which we have to do, made such by statute; that

"it is not only a maritime regulation in its character but it is clearly within the scope of the power given to Congress to regulate commerce,"

Providence & N. Y. S. S. Co. v. Hill, 109 U. S., 589.

"one pre-eminently of admiralty jurisdiction,"

a basis of jurisdiction is at once apparent.

The District Court

"is a maritime court instituted for the purpose of administering the law of the sea."

N. J. S. N. Co. v. Merchants' Bank, 6 How., 392.

The purpose of a proceeding for limitation *is not to adjudicate fault or liability as in a direct proceeding*

"the very object of proceedings for limited liability is to inquire and determine whether the parties ought to be sued at all in any other tribunal after giving up, or submitting to pay the value of, all their interest in the ship and freight."

Providence & N. Y. S. S. Co. v. Hill, 109 U. S., p. 595.

At this point, we summarize our contention as follows:

1. That since the Act of 1851 was amended in 1884, the limitation of liability in this country extends to all debts and liabilities, at least so far as they are incurred without the privity or knowledge of the owner.

2. That since the adoption of said statutes, the limitation of liability of vessel owners is a part of our maritime law and to be administered by a District Court as maritime law.

3. The limitation extends to all debts and liabilities, whether maritime or non-maritime in themselves, since the proceeding for limitation is primarily to ascertain whether, after the ship has been surrendered or a value paid, the owner or owners ought to be sued in any other jurisdiction;

i. e., the District Court in administering the benefit of the statutes, acts as a qualified court of bankruptcy, and having determined that the owner or owners have offered to account by payment of fund or actual surrender of the vessel at the end of the voyage, *it distributes that fund ratably to all the claimants of the last voyage.*

4. The statute makes no provision for the owner claiming limitation to defend against claims, but this Court, by Rule 56, promulgated in 1872, provided that if the libel or petition shall state the facts and circumstances by reason of which exemption from liability is claimed, it may defend against the claims at the same time it is contending for limitation. This is a matter of procedure within the authority of the court; the right to limitation is substantive and given by the statute.

5. If the right of the District Court, after having determined the primal question that the petitioner is entitled to limitation of liability, is subject to any limitation in this character of proceeding, it should be only that as to claims non-maritime in their nature the right as to the owner to contest under Rule 56 should be limited to the maritime claims. This, however, is not a necessary limitation since, as has already been shown, having jurisdiction as to the right to limit, it can and does exercise authority and over claims which it could not entertain in a direct proceeding.

6. The statutes as they now stand make this principle of the maritime law a part of the maritime law of this country, and in doing so Congress saw fit, under its undoubted power to regulate commerce and all the instrumentalities thereof, not to surround it with the limitations of any particular country or of the ancient maritime law, *but to make it as broad as language could.* Congress laid down a few

> "general principles and propositions and left it to the courts to enforce them and carry them into practical effect." (109 U. S., 590.)
> While the rule adopted by Congress
> "is the same as the rule of the general maritime law, its efficacy as a rule depends upon statute and not upon any inherent force of the maritime law. * * * Whilst it is now a part of our maritime law, it is nevertheless statute law and must be interpreted and administered as such."

The Scotland, 105 U. S., 24-29.

7. The courts could, as Judge Ware did, have adopted limitations on the general maritime law as to limitation of liabilities. The limitations which can now be placed are only those of the statute. Since the amendment of 1884 there is express definition of the American law, which includes all debts or liabilities, and segregates one owner's liability from that of all others, *a most important element in the statute.*

8. The primal object of the proceeding, as this Court has said (109 U. S., 595), being

> "to inquire and determine whether the parties ought to be sued at all in any other tribunal after giving up, or submitting to pay the value of, all their interest in the ship and freight,"

the basis of the jurisdiction is determined by the maritime character of the right as defined by the statute. The mere filing of the petition, with offer to give stipulation, confers jurisdiction. This Court has said that the proceeding to limit liability is not an action against the vessel and her freight except where they are surrendered to a trustee, *but it is an equitable action.*

In re Morrison, 147 U. S., 14-34.

Limitation of liability, being a right arising in the maritime law, as fixed and defined by the statute as it now stands, is to be administered by the District Court of the United States as the only competent court to do so; and as Congress under its authority to regulate commerce has seen fit to limit the aggregate of liabilities to the value of the ship and pending freight and the liability of the individual owner and his proportionate share thereof, the question as to whether the debt or liability is maritime or non-maritime is a question ancillary to the main question of desire to surrender the property or value and have the benefit of the statute, and as such is, as this Court has said, rather an equitable action, in effect a bankruptcy proceeding, and that if this is subject to any limitation at all, it is only that as to non-maritime claims the owner would be debarred of a right to defend against them and the authority of the court limited as to such to a proportionate distribution of the funds on the claims of the last voyage and a separation of the liability of the several owners.

That a petitioner may have claimed a right to defend does not affect the power of the court to grant the limitation and deny defense on question of fault in that court.

The right to defend is not given by the statute but by rule of court.

10. The question is one affecting not only all the vessels flying the American flag but the vessels of every maritime nation in the world entering our ports. The maritime law has been universally recognized as a branch of international law, —a law common in main principle to all nations. No court is competent to administer such law except that which makes no distinction generally as to nationality or residence and which is not bound by any municipal regulation nor the laws of any subsidiary State.

"The Act of Congress which limits the liability of ship-owners was passed in amendment of the maritime law of the country, and the power to make such amendments is co-extensive with that law. It is not confined to the boundaries or class of subjects which limit and characterize the power to regulate commerce; but, in maritime matters, it extends to all matters and places to which the maritime law extends."

In re Garnett, 141 U. S., 1, 12.

The object of the law, as appears by the language of the Act itself, is to limit the common liability to the value of the ship and freight pending, and the individual liability of owners to their proportionate share therein. This can only be done in a District Court of the United States. This Court has said:

"Unless some proceeding of this kind were adopted which should bring all the parties interested into one litigation, and all the claimants into concourse for a *pro rata* distribution of the common fund, it is manifest that in most cases the benefits of the act could never be realized. Cases might occur, it is true, in which the ship-owners could avail themselves of those benefits, by way of defense alone, as where both ship and freight are totally lost, so that the owners are relieved from all liability whatever. But even in that case, in the absence of a remedy by which they could obtain a decree of exemption as to all claimants, they would be liable to a diversity of suits, brought perhaps in different States, after long periods of time, when the witnesses have been dispersed, and issuing in contrary results before different tribunals; whilst in the ordinary cases, where a limited liability to some extent exists, but to an amount less than the aggregate claims for

damages, so as to require a concourse of claimants and a *pro rata* distribution, the prosecution of separate suits, if allowed to proceed, would result in a subversion of the whole object and scheme of the statute. The questions to be settled by the statutory proceedings being, first, whether the ship *or its owners* are liable at all (if that point is contested and has not been decided), and secondly, if liable, whether the owners are entitled to a limitation of liability, must necessarily be decided by the District Court having jurisdiction of the case; and, to render its decision conclusive, it must have entire control of the subject to the exclusion of other courts and jurisdictions. If another court may investigate the same questions at the same time, it may come to a conclusion contrary to that of the District Court; and if it does (as happened in this case), the proceedings in the District Court will be thwarted and rendered ineffective to secure to the ship-owners the benefit of the statute."

Providence & N. Y. S. S. Co. v. Hill Mfg. Co., 109 U. S., 578, at 594-595.

In our view, the question of jurisdiction is determined by the placing of the vessel and her pending freight in the custody of the court or of paying the value thereof into the registry of the court, or of giving a bond to answer the same when called upon. The right to do this is a right arising in the maritime law as now adopted in this country and anciently recognized by maritime nations. Whether the claims presented against them are maritime or non-maritime is not material, at least beyond the question of fault. It being the policy of this government to confine the limitation to claims arising upon the last voyage, the question as to allowance or disallowance of such claims and the distribution thereof

is not one of jurisdiction. The question of jurisdiction is fixed by claiming the benefit of the statute and submitting the property or its value at the disposal of the court in satisfaction of the limitation.

As this court said in

The Blackheath, 195, U. S., 364,

> "It would be simple, if simplicity were the only thing to be considered, to confine the admiralty jurisdiction, in respect of damage to property, to damage done to property afloat. That distinction sounds like a logical consequence of the rule determining the admiralty cognizance of torts by place.
>
> "On the other hand, it would be a strong thing to say that Congress has no constitutional power to give the admiralty here as broad a jurisdiction as it has in England or France. Or, if that is in some degree precluded, it ought at least to be possible for Congress to authorize the admiralty to give redress for damage by a ship, in a case like this, to instruments and aids of navigation prepared and owned by the government."

In the present case, it would be easy to say that, as the rules promulgated by this court fixing the procedure under the Act of 1851 were framed as if all claims within the right of limitation must be maritime, no maritime debts or liabilities were within the right of limitation. This, however, would lay aside the express language of the law as it now stands and the intent of Congress in passing the Act of 1884; and to send the owner or charterer to some tribunal other than a District Court to obtain a benefit would allow the shadow of procedure to obliterate or blot out a substantive and substantial right, given to the owners or charterers of

merchant vessels, not only of the United States but of the world, by definite congressional enactment.

We respectfully submit that the right of limitation extends to "all" the debts and liabilities; and that each individual owner has a right to have that limitation fixed and his proportionate share determined in the District Court of the United States.

Respectfully submitted,

HARVEY D. GOULDER,

FRANK S. MASTEN,

Cleveland, Ohio. *For Appellant.*

No. [redacted] 10.

FILED
JAN 27 1911
JAMES H. MAHONEY
Clerk

Supreme Court of the United States

WESLEY C. RICHARDSON, LAFAYETTE S. SULLIVAN, and NANCY E. JONES,
Appellants,
vs.
JUDSON HARMON, Receiver of the Toledo Terminal & Railway Co.
Appellee

October Term, [redacted] 1910.

BRIEF FOR APPELLEE

FRANK H. CANFIELD,
GEORGE L. CANFIELD,
Advocates for Appellee.

DETROIT:
Free Press Printing Co., Free Press Bldg., 11 and 13 Lafayette Ave.
1911

Supreme Court of the United States

WESLEY C. RICHARDSON, LAFAYETTE S. SULLIVAN, and NANCY E. JONES, *Appellants*, vs. JUDSON HARMON, Receiver of the Toledo Terminal & Railway Co. *Appellee*	October Term, 1908. No. 716.

BRIEF FOR APPELLEE

This was a suit in admiralty by ship owners to limit their liability for damage done by their vessel, the "Crete," to a railway bridge and one of its abutments of solid masonry, at Toledo, in Lucas County, Ohio, the structure being so constructed as to have become a part of the land upon which it rested. In other words, it was a proceeding in the admiralty to limit liability against the consequences of a non-maritime tort. The District Court sustained exceptions to its jurisdiction and the suit was thereupon brought by appeal to this Court, the question of jurisdiction being certified, pursuant to Section 5 of the Act of 1891.

The Toledo Terminal & Railway Company, of which Judson Harmon, the appellee, was receiver, owned and operated a railway bridge over the Maumee River, at Toledo, Ohio.

On October 14th, 1906, the barge "Crete," owned and operated by the appellants, in attempting to pass through the draw of this bridge, collided with one of its piers and inflicted heavy damage to the structure and railway track thereon.

The receiver then commenced an action at law in the Court of Common Pleas for Lucas County, Ohio,

against two of the shipowners, to recover $35,000.00, as the damages done by the "Crete" to the bridge and railway mentioned.

Afterwards, and while this action was pending in the state court, on May 25th, 1907, the appellants filed a petition in admiralty in the District Court at Cleveland for limitation of their liability in respect of the damages sued for by appellee in the state court as well as others which might be asserted on account of the voyage on which the ship had been engaged.

This petition, except its caption and verification, is contained in the certificate of the District Judge and appears on pages 18-21 of the printed record in this court.

It is in the usual form of petitions which seek the affirmative relief provided by R. S. 4282-4289, and General Admiralty Rules 54-58. Narrating the general facts of the voyage, the collision with the bridge, and the pending action therefor in the Lucas County Court, it claims the protection of the statutes and admiralty rules mentioned, including an injunction against appellee's further prosecution of his action at law and a monition requiring him to present his claim for damages to the Admiralty Court within a time stated.

There can be no question that appellants sought this relief in the District Court as a court of admiralty; article IV of the petition (record, 20) avers: "That all and singular the premises are true and within the admiralty and maritime jurisdiction of the Honorable Court" (20).

The District Court, in accordance with the prayer of the petition (record, 20-21) and the practice in cases of admiralty and maritime jurisdiction, issued its injunction (record, 9-11) against the Railway Company and its Receiver, as well as their representatives, forbidding the further prosecution of any suits on account of the damage done to the bridge, and, also, by its monition (record, 7-8) commanded them to present their claim to the District Court, in admiralty, at Cleveland, on October 3rd, 1907.

In obedience to these writs, but under protest as to the jurisdiction of the District Court, the appellee presented his claim as commanded (record, 12-13). He showed that the structure injured by the "Crete" was permanently affixed to the soil and formed a part thereof, in Lucas County, Ohio; that the damage done by the "Crete" was a trespass to real estate in said County,

amounting to $35,000.00, for which his action was pending in the state court, and whose jurisdiction thereof he believed to be sole and exclusive; he denied the jurisdiction of the District Court of the subject matter of said action and prayed relief accordingly. In connection with his "claim," he also filed an answer to the petition in which he further excepted specially to the jurisdiction of the Court (record, 21-23), and asked that, as to his claim, the petition might be dismissed and the injunction dissolved.

The question of jurisdiction was then argued before the District Judge, who sustained the exceptions and held that the District Court, in admiralty, had no jurisdiction of a proceeding for limitation of liability in respect of a non-maritime tort (record, 14, 23).

We submit that the decree should be affirmed and the question certified answered in the negative.

I.

THIS APPEAL PRESENTS THE SINGLE QUESTION OF THE JURISDICTION OF THE DISTRICT COURT TO ENTERTAIN A PETITION FOR LIMITATION OF A SHIPOWNER'S LIABILITY AGAINST NON-MARITIME DAMAGES AND TO ENJOIN THE PROSECUTION OF AN ACTION FOR SUCH DAMAGES IN A COURT OF THE COMMON LAW.

We assume that the question is limited to the admiralty jurisdiction, or, in other words, to the jurisdiction of the District Court while sitting as a court of admiralty; while the question certified (43) mentions the "District Court" broadly and without the qualification "in admiralty," it is obvious from the whole record that the proceeding was instituted and carried through on the admiralty side of the court, or, in a "court of admiralty." Apart from its admiralty jurisdiction, there is no other side of the District Court in which such a proceeding could be brought. It plainly would not fall within the range of its authority as a court of common law, or of bankruptcy; and the equity jurisdiction of the District Courts, depending upon express statutes, does not extend beyond the enforcement of some liens in favor of the United States, suits in respect of deprivation of civil rights, against consuls, etc. (R. S. 563; Street's Federal Equity Practice, Section 3).

II.

THIS QUESTION, WE SUBMIT, HAS BEEN FULLY CONSIDERED AND FINALLY DETERMINED BY THIS COURT.

Ex parte Phoenix Insurance Co., 118 *U. S.*, 610.

This suit cannot be distinguished from the one at bar and there has been no change in the statutes, or modification of the rules of this Court, in respect of the questions involved, since that decision was made in 1886. Like the present case, it originated in a petition for limitation of liability against damages to real estate, done by the steamer "Oconto," whose owners had been sued therefor in the state courts of Wisconsin. The District Court had retained jurisdiction on the ground that the statute was broad enough to cover all damages done by a vessel, whether on water or land; that, being a maritime rule, it could be enforced by a court of admiralty; and that, as the court had the fund representing the ship, it had jurisdiction of all claims against it, maritime or otherwise, as ancillary or incidental to its complete disposition (in re Goodrich Trans. Co., 26 Fed., 713). This Court thereupon issued a writ of prohibition to the District Court, holding that there was a total lack of jurisdiction of the proceeding. The case at bar is in all respects similar to the case cited, and the Court below could not have retained jurisdiction without disregarding that decision of this Court.

III.

THE INJURY DONE BY THE "CRETE" TO THE RAILWAY BRIDGE WAS NOT A MARITIME TORT BUT A TRESPASS TO REALTY OF WHICH THERE IS NO JURISDICTION IN THE AMERICAN ADMIRALTY.

The Troy, 208 *U. S.*, 321.
R. R. vs. S. S. Co., 208 *U. S.*, 316.
The Phoenix Cons. Co. vs. The "Poughkeepsie," 212 *U. S.*, 558.

These decisions affirmed the rule stated in *ex parte Phoenix Insurance Co., supra*, where this Court said:

> "Nothing is clearer than that, by the express adjudication of this Court, the District Court, as a court of admiralty, would have no jurisdiction of a suit, either *in rem* or *in personam*, by any one of the sufferers by the fire, to recover damages from the vessel or her owner. It was so held in *The Plymouth*, 3 Wall., 20. * * * Under this authoritative decision, as the owners of the burned property could not sue originally in the admiralty for their damages, it is impossible to see how, by the present form of proceeding, the owner of the steamer can give to the Admiralty Court jurisdiction to entertain the suits for the damage, by a practical removal of them into the Admiralty Court. For the petition of the owner of the vessel says that it desires as well to contest its liability for the damage as to claim the benefit of a limitation of liability, and it prays that it may be allowed to contest in the Admiralty Court, and that, if it is not liable, there may be a decree to that effect."

The petition in the present case (record, 20-21), is of the same tenor and effect.

This Court further said, in the case cited:

> "As there is no foundation in the general admiralty jurisdiction of the District Court, for its assumption of jurisdiction in this case, and none in the special provisions of the statute for the limitation of liability, it is sought to uphold the jurisdiction under the Rules in Admiralty promulgated by this Court in reference to the limitation of liability. * * * In view of the decision made by this Court at December Term, 1865, in the case of *The Plymouth*, it is not to be presumed that the six of the judges upon the bench when it was made, who were also upon the bench when the Rules were promulgated, intended that those rules should contain anything in conflict with the decision in the case of *The Plymouth*. Nor are those rules capable of any such construction. * * * There is nothing in any of these rules which purports to enlarge the jurisdiction of the District Courts of the United States as to the subject matter. On the contrary, they exclude any such con-

> struction, and leave that jurisdiction in admiralty, within the bounds set for it by the Constitution and statutes and the judicial decisions under them."

That decision was made November 1st, 1886, and there has since been no legislation or rule of court or judicial decision which in any way enlarges the jurisdiction of the District Courts beyond the limits which this Court there defined and stated.

IV.

SECTION 18, OF THE ACT OF JUNE 26TH, 1884 (23 S. 57), DOES NOT ENLARGE THE JURISDICTION OF THE DISTRICT COURTS NOR BRING NON-MARITIME LIABILITIES WITHIN THE SCOPE OF THE LIMITED LIABILITY STATUTES (R. S. 4282-4289; 23 S. 57; 24 S. 79).

The argument of the appellants requires such an interpretation of Section 18 as not only repeals, as of its date, all laws in respect of the liability and non-liability of shipowners, but also destroys the settled limits of admiralty jurisdiction.

If Congress had the intention which appellants ascribe, then all existing legislation, judicial decision, and rules of court, were repealed by this statute, because, as held by this Court in *ex parte Phoenix Insurance Co., supra*, they were utterly inconsistent with the construction of Section 18 which is now urged. The words of this section, and of the repealing clause which follows, are these:

> "18. That the individual liability of a shipowner, shall be limited to the proportion of any or all debts and liabilities that his individual share of the vessel bears to the whole; and the aggregate liabilities of all the owners of a vessel on account of the same shall not exceed the value of such vessels and freight pending; Provided, that this provision shall not affect the liability of any owner incurred previous to the passage of this act, nor prevent any claimant from joining all the owners in one action; nor shall the same apply to wages due to persons employed by said shipowners."

"30. All laws and parts of laws in conflict with the provisions of this act are hereby repealed; and this act shall take effect and be in force on and after July first, eighteen hundred and eighty-four."

(Act June 26th, 1884: 23 S. 60; U. S. Compiled Statutes 2849-2852.)

Now the argument of appellants is that the statute shows that it was the intention of Congress to give shipowners entire immunity against all debts and liabilities on account of the ship and that the word "all" must be understood in its most unlimited sense.

Manifestly, if this construction be correct, Congress must also have intended, by Section 30, the repealing clause, to annul all existing laws under which any personal liability existed, since such laws would be in conflict with Section 18, if it was intended to have the unlimited effect which is now argued.

It would, therefore, seem to follow that if Congress had such intention, it intended to repeal all other laws fixing liabilities on shipowners or granting any less exemption than Section 18. Among the laws so affected, under this construction, would be R. S. 4464, 4487, and 4493, for example, statutes imposing special liabilities in respect of damage to passengers and baggage. Indeed, the original Act of 1851 (R. S. 4282-4289), would obviously have been repealed, since that law would have been in conflict with Section 18, if the construction sought by appellants is correct.

But it clearly appears that Congress did not intend any construction of Section 18 which would be in conflict with existing legislation on the subject; and, in particular, that it did not intend to repeal the law of limited liability as it then stood in the Revised Statutes. This is shown by the fact that in 1886 it not only recognized the continued existence of the original law but extended its provisions over additional classes of vessels—

Act June 19th, 1886; 24 S. 80:

"(4) That Section 4289 of the Revised Statutes be amended so as to read as follows:

'Section 4289. The provisions of the seven preceding sections, and of section eighteen of an act entitled, "An Act to Remove Certain Burdens on

> the American Merchant Marine and Encourage the American Foreign Carrying Trade, and for Other Purposes," approved June 26th, 1884, relating to the limitation of the liability of the owners of vessels, shall apply to all sea-going vessels, and also to all vessels used on lakes or rivers or in inland navigation including canal-boats, barges and lighters.'"

Whatever doubt might possibly have been created by a literal interpretation of Section 18 and the repealing clause, as to their effect upon the older statutes in limitation of liability, previous to 1886, was solved by Congress itself, when, in the Act of June 19th, 1886, above quoted, it treated both the older and the later laws as in effect and extended them together over further classes of vessels and other waters. This was a legislative recognition of the fact that Section 18 was simply *in pari materia* with the original law and not intended to have any such effect as the interpretation now sought by appellants would require. Therefore, the original law, as construed by this Court, remains in full force and covers the entire field of liabilities of shipowners, *ex delicto*. The law of 1884 provided a similar limitation as to liabilites *ex contractu* and this is its extent, for the whole range of liabilities in tort was already fully covered by the earlier legislation. Accordingly, the liability here being *ex delicto*, the remedy of the appellants must be found under the Act of 1851 and not under that of 1884. And their right to any remedy under the Act of 1851 is disposed of by *ex parte Phenix Insurance Co., supra*.

V.

SECTION 18 APPLIES TO CONTRACT LIABILITIES ONLY AND DOES NOT AFFECT THE ORIGINAL LAW OF 1851.

This has been the conclusion of nearly, if not quite all, of the courts which have considered the question. The consensus of judicial opinion is against the effect which appellants ascribe to the later law and it is significant that, although it has been frequently before our admiralty courts, no authority appears to sustain their position.

Towing Co. vs. Trans. Co., 155 *Fed.* 11 (*CCA*). *s. c.* (*Certiorari denied*), 207 *U. S.*, 596.

Force vs. Ins. Co., 35 *Fed.* 767, 778.
Miller vs. O'Brien, 35 *Fed.*, 779, 783.
The "Carver," 35 *Fed.*, 665, 669.
McPhail vs. Williams, 41 *Fed.*, 61.
Douse vs. Sargent, 48 *Fed.*, 695.
Whitcomb vs. Emerson, 50, *Fed.*, 128.
The "Republic," 64 *Fed.*, 109, 113 (*CCA*).
The "Faxon," 75 *Fed.*, 312, 318 (*CCA*).
Gilchrist vs. Ins. Co., 104 *Fed.*, 566, 573 (*CCA*).
The "Puritan," 94 *Fed.*, 365.
Rudolf vs. Brown, 137 *Fed.*, 106.

VI.

CONGRESS INTENDED TO PRESERVE THE ACT OF 1851 AS TO TORTS AND TO COVER CONTRACT LIABILITIES BY SECTION 18 OF THE ACT OF 1884.

If this is a matter in which the Congressional Record (cited in appellant's brief), may be consulted for the purpose of ascertaining the intention of Congress, it is apparent that there was no purpose there to change the existing law in respect of liabilities for torts but only to give a further protection against liabilities *ex contractu*.

Senator Frye said: "Section 18 limits the individual liability of a shipowner for any and all debts and liabilities that his individual share of the vessel bears to the whole. That is not so great a change as appears on the face of the law. By statute today any shareholder in a vessel is liable for no more than the value of the share for any tort of the master or in case of collision or in any other way except by contract." * * *

Senator Conger: "This provision in the bill follows the usual law of all the European nations, that in the case of damage to a vessel the party without wrong of his own shall be liable only for the value of the vessel and the freight."

Senator Sherman: *"Suppose a tort?"*

Senator Conger: *"This provision does not apply to that."* * * *

Senator Miller (Cal.): *"Why is not the provision in the Revised Statutes as it stands now sufficient?"*

Senator Vest: *"It does not apply to contracts at all, only to torts."*

A study of the history of Section 18, so far as it appears in the Congressional Records, indicates that Congress was satisfied with the earlier law and intended it to remain in respect of torts: this view is supported by the subsequent legislation of 1886; that it desired to give a further limitation against liabilities arising out of contract and so make the law as a whole afford protection against both classes of liabilities.

The defeat of the amendment which sought to place the words "without his personal consent or privity" in Section 18, is significant. These words are only applicable to liabilities *ex delicto* and seemed incongruous in a law designed for liabilities *ex contractu.* This is clearly pointed out in one of the first decisions under the Act of 1851, where it was contended that that law covered both liabilities and the court held that it was limited to torts because of the presence of the words "without the privity or knowledge of the owner."

The Ella, 8 *Am. Law Reg.,* 206 (1858).

VII.

THE LAW OF LIMITED LIABILITY OF SHIPOWNERS IS CONFINED TO THE SUBJECT-MATTER OF ADMIRALTY AND MARITIME JURISDICTION AND DOES NOT EXTEND TO LIABILITIES BEYOND.

Whether the statutory limitations extend to non-maritime torts and contracts is a question which may be considered broader than that presented by the present record. The proceeding here was brought in the admiralty and dismissed for want of jurisdiction there. The record does not, strictly speaking, involve consideration of whether, elsewhere than in admiralty, the statutes might be enforced against non-maritime claims.

It is well understood that so far as maritime liabilities are concerned, the benefits of the statutes may be had either by the original proceedings provided by admiralty rules 54-58 or by using the law as a defense to an action at law as in Craig vs. Insurance Co., 26 Fed. 798; 141 U. S. 640.

As to non-maritime liabilities or obligations, we submit that the statutes have no application and afford no defense in any court.

This question was considered by Mr. Justice Harlan, at circuit, in *Goodrich Trans. Co. vs. Gagnon*, 36 *Fed.*, 123. This was a phase of the "Oconto" litigation subsequent to the proceedings in admiralty reviewed in *ex parte Phoenix Insurance Co.*, 118 *U. S.*, 610. After the decision last mentioned, the shipowners sought the protection of the Act of 1851, against the non-maritime claims, by a bill in equity in the Circuit Court. In an opinion given in October, 1888, the scope of the law of limited liability is fully considered and it is held that the language of the statutes must be construed with reference to its maritime subject-matter and embraces such liabilities as are within the jurisdiction of the admiralty; and that, as the liabilities for damage done to real estate were non-maritime, the statute did not apply. In the course of the opinion, Mr. Justice Harlan said:

> "Recurring to the sections of the Revised Statutes which must control our decision, it is clear that the plaintiff's case requires the court to hold that Congress intended the words, 'for any act, matter, or thing, loss, damage, or forfeiture done, occasioned, or incurred,' to include all damage to, or destruction of, property of every kind on land, although unconnected with navigation or commerce, provided only that such damage or destruction was caused by the neglect of those in control of the vessel while it is actually employed in navigating the public waters of the United States. It does not seem to the court that the statutory provisions in question ought to be so construed. The general words above quoted should be interpreted in the light of the subject-matter of the statute, and must be restricted by the special words previously used in the same and preceding sections. The enumeration of acts, things, losses, damages done or occasioned, are those of admiralty jurisdiction, according to the maritime law of the United States. The specific provision made for the distribution of the proceeds of the value of the offending vessel and its freight among the owners of property embezzled, lost, or destroyed on the voyage of the offending vessel, has reference to such persons or owners only as can maintain an action, civil and maritime, in the admiralty courts, on account of such embezzlement, loss, or destruction of property. In other words, the losses, with respect to which Congress designed in the interests

> of commerce, to extend the privilege of limited liability, are maritime losses. The acts, matters, things, losses, damages, and forfeitures referred to in section 4283 are those belonging to the classes specifically described in the context; that is, they must be acts, matters, things, losses, damages, or forfeitures done, occasioned, or incurred in such manner that it may be said that the substance and consummation of the particular wrong or wrongs complained of took place and became complete on the waters navigated by the offending vessel. That cannot be said in reference to the losses here in dispute. We do not believe that it was within the mind of Congress to establish a rule of limited liability to be applied by all courts, federal and state, for injuries done without the privity or knowledge of its owner, by those in charge of a vessel, to property on land, and in respect to which injuries the courts of admiralty could not take cognizance."

If Section 18 is *in pari materia* with the statutes above mentioned it cannot be said to embrace a different subject-matter or include the whole field of common-law jurisdiction.

In 1890, this Court said, after referring to all these statutes and many of its own prior decisions thereon:

> "The Act of Congress which limits the liability of shipowners was passed in amendment of the maritime law of the country, and the power to make such amendments is co-extensive with that law."

In re Garnett, 141 *U. S.* 1, 12.

This expresses both the extent and the limits of this legislation, under the Constitution, and if it is defined by maritime law and admiralty jurisdiction, the entire question certified by this appeal must be answered in the negative.

We submit that the decree below should be affirmed.

FRANK H. CANFIELD,
GEORGE L. CANFIELD,
Advocates for Appellee.

Detroit, Michigan.

RICHARDSON *v.* HARMON, RECEIVER OF THE TOLEDO TERMINAL AND RAILWAY COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

No. 10. Argued April 25, 26, 1911.—Decided November 20, 1911.

In construing an act of Congress, the known policy of Congress in regard to the subject-matter of the statute will be considered.

The policy of Congress in enacting statutes in regard to the liability of vessel owners has been to encourage investment in ships and to that end to relieve the owners from liabilities that are not the result of their own fault, negligence or privity.

Section 18 of the act of June 26, 1884, 23 Stat. 57, c. 121, adds to the claims against which vessel owners can limit their liability and includes those arising out of the conduct of the master and crew, whether the liability be strictly maritime or from a tort non-maritime, but leaves them liable for their own faults, neglect and contracts.

The owners of a vessel colliding by its own fault with a structure on land can limit their liability for the damages done to their interest in the vessel although such a collision may not be a maritime tort, and the District Court has jurisdiction to entertain a petition to that effect.

THE facts, which involve the construction of the statutes limiting liability of vessel-owners, are stated in the opinion.

Mr. Harvey D. Goulder and *Mr. Frank S. Masten* for appellants:

The District Court of the United States has jurisdiction to entertain a libel or petition for limitation of liability of the owners of a vessel against claims for non-maritime damages or any claim for any liability or debt, although not within the admiralty and maritime jurisdiction of such court. See act of March 3, 1851, c. 43, 9 Stat. 635,

§§ 4282–87, Rev. Stat.; § 18 of act of June 26, 1884, 23 Stat. 57; Act of June 19, 1886, 24 Stat. 79. These statutes have been construed in *The Republic*, 61 Fed. Rep. 109, 113; *O'Brien* v. *Miller*, 168 U. S. 287, 303.

While under the act of 1851, it has been held that a non-maritime damage, *i. e.*, one not within the admiralty and maritime jurisdiction in a direct proceeding on the claim, could not be limited against, this court has never so held, nor has any court so held where the cause arose subsequent to the enactment of § 18 of the act of 1884, and the question was considered.

The general maritime law gave limitation of liability to owners of vessel property, to the end that merchants might be encouraged to invest in maritime commerce. *The Rebecca*, 1 Ware, 187; *Norwich Co.* v. *Wright*, 13 Wall. 104, 116; *The Scotland*, 105 U. S. 24, 28; *The Lottawanna*, 21 Wall. 558, 576; *Providence & N. Y. S. S. Co.* v. *Hill*, 109 U. S. 578; *Ex parte Phenix Ins. Co.*, 118 U. S. 610, 625; *The Maine*, 152 U. S. 122; *N. J. Steam Nav. Co.* v. *Bank*, 6 How. 344.

The language of the act of 1884 is as broad as it can be made, thereby showing that it was the intent of Congress to remove all exceptions save those named in the proviso, whether maritime or non-maritime and whether created with or without the privity or knowledge of the owner.

For legislative history of the act, see 15 Cong. Rec., pt. 1, p. 976; pt. 4, pp. 3650, 3970–74, 5440; H. R. bill, 2248, and Sen. bill 1448, 48th Cong., 1st Sess.

Almost since a merchant marine has existed in any civilized nation, the ship herself has been treated as a sentient thing, liable for her own wrong in whosesoever hands she may be, liable for her own contractural obligations and, under the general maritime law, the liability ended with the loss or surrender of the ship and freight. *Tucker* v. *Alexandroff*, 183 U. S. 438. Congressional records may be referred to to ascertain legislative intent where

the meaning is in controversy. *Ayer & Lord Tie Co.* v. *Kentucky*, 202 U. S. 409, 427; *The Delaware*, 161 U. S. 459, 472; *Butler* v. *Boston S. S. Co.*, 130 U. S. 527, 554.

The statute being an adoption of the general maritime law, the nationality of the vessel or the place of injury is immaterial where the courts of the United States are resorted to. *The Scotland*, 105 U. S. 24; *The Scotland*, 118 U. S. 507; *The Great Western*, 118 U. S. 520.

The District Court of the United States has authority to give the benefit of the limitation of maritime and non-maritime liabilities alike. *Schuchardt* v. *Angelique*, 19 How. 239, 241; *The J. E. Rumbell*, 148 U. S. 1; *Davis* v. *Child*, 2 Ware, 78; *The H. E. Willard*, 52 Fed. Rep. 387; *The Hamilton*, 207 U. S. 398, 406; *N. J. Steam Nav. Co.* v. *Bank*, 6 How. 319.

Mr. George L. Canfield, with whom *Mr. Frank H. Canfield* was on the brief, for appellee:

This case is controlled by *Ex parte Phenix Ins. Co.*, 118 U. S. 610, and the District Court has no jurisdiction.

The injury done by the "Crete" to the railway bridge was not a maritime tort but a trespass to realty of which there is no jurisdiction in the American admiralty. *The Troy*, 208 U. S. 321; *Railroad* v. *Steamship Co.*, 208 U. S. 316; *The Phœnix Co.* v. *The Poughkeepsie*, 212 U. S. 558.

Section 18 of the act of June 26, 1884, 23 Stat. 57, does not enlarge the jurisdiction of the District Courts nor bring non-maritime liabilities within the scope of the limited liability statutes. Rev. Stat., §§ 4282–89; 24 Stat. 79.

The argument of appellants requires such an interpretation of § 18 as not only repeals, as of its date, all laws in respect of the liability and non-liability of ship-owners, but also destroys the settled limits of admiralty jurisdiction.

Section 18 applies to contract liabilities only and does not affect the original law of 1851. This has been the

conclusion of nearly, if not quite all, of the courts which have considered the question. The consensus of judicial opinion is against the effect which appellants ascribe to the later law and it is significant that, although it has been frequently before our admiralty courts, no authority appears to sustain their position. *Towing Co.* v. *Trans. Co.*, 155 Fed. Rep. 11; *S. C.* (certiorari denied), 207 U. S. 596; *Force* v. *Ins. Co.*, 35 Fed. Rep. 767, 778; *Miller* v. *O'Brien*, 35 Fed. Rep. 779, 783; *The Carver*, 35 Fed. Rep. 665, 669; *McPhail* v. *Williams*, 41 Fed. Rep. 61; *Douse* v. *Sargent*, 48 Fed. Rep. 695; *Whitcomb* v. *Emerson*, 50 Fed. Rep. 128; *The Republic*, 64 Fed. Rep. 109, 113; *The Faxon*, 75 Fed. Rep. 312, 318; *Gilchrist* v. *Ins. Co.*, 104 Fed. Rep. 566, 573; *The Puritan*, 94 Fed. Rep. 365; *Rudolf* v. *Brown*, 137 Fed. Rep. 106.

Congress intended to preserve the act of 1851 as to torts and to cover contract liabilities by § 18 of the act of 1884.

The legislative history of § 18, so far as it appears in the Congressional Records, cited by appellants, indicates that Congress was satisfied with the earlier law and intended it to remain in respect of torts: this view is supported by the subsequent legislation of 1886; that it desired to give a further limitation against liabilities arising out of contract and so make the law as a whole afford protection against both classes of liabilities. And see *The Ella*, 8 Am. Law Reg. 206 (1858).

The law of limited liability of ship-owners is confined to the subject-matter of admiralty and maritime jurisdiction and does not extend to liabilities beyond. *Goodrich Transportation Co.* v. *Gagnon*, 36 Fed. Rep. 123; *Re Gauntt*, 141 U. S. 1, 12.

MR. JUSTICE LURTON delivered the opinion of the court.

The steam barge "Crete" while proceeding up the Maumee River from Lake Erie collided with the abutment

of a railway draw-bridge, resulting in great damage to both barge and bridge. For the damage sustained by the bridge an action was brought against two of the owners of the barge in a common-law court of the State at Toledo, Ohio. Thereupon the owners of the barge, three in number, filed their petition and libel in the District Court of the United States at Cleveland, Ohio, where two of them resided and where the "Crete" was lying, for a limitation of liability under §§ 4283–4285, Revised Statutes and § 18 of the act of June 26, 1884, 23 Stat. 57, c. 121.

This petition duly averred that the said collision was without fault upon the part of the "Crete;" but, if there was any, it was without the privity or knowledge of the owners, or either of them. It stated that the damages claimed in the pending action at law were thirty-five thousand dollars, and that they apprehended other actions of like kind, and if liable as claimed, the aggregate would greatly exceed the value of the interests of the owners in the vessel and her freight. Therefore, the petition sought the benefit of the limited liability act of Congress and the right to defend against any liability as provided by general law and admiralty rule 56 of the Supreme Court.

Under this petition an appraisement was made of the value of the "Crete" on the termination of her voyage, and the value of each separate one-third interest of each owner in the vessel, and her pending freight was appraised at $4,171.50, for which value bond was made to stand in the room and place of the boat and her freight. Monition issued in usual form requiring every one claiming any loss or damage "by reason of the premises," to appear and make proof of their respective claims.

The appellees were also enjoined from proceeding with the action pending in the said common-law court, and they, together with all the world, were admonished to bring no other or further actions, and to file their claims against the "Crete," or her owners, in the court below, that they

might share in the distribution of the appraised value of the said vessel and her pending freight.

The appellee, Judson Harmon, as receiver of the Toledo Terminal Railway Company, owner of the bridge damaged by the collision mentioned, appeared and excepted to the jurisdiction of the court. This exception was sustained and the injunction dissolved, the court holding that the cause of action asserted in the common-law court of Ohio by said receiver against the owners of the colliding barge was for a non-maritime tort, not cognizable in a court of admiralty, and that the limited liability act of Congress did not extend to any such right of action

Prior to the eighteenth section of the act of June 26, 1884, 23 Stat. at Large, pp. 53–57, it had been the settled law that the District Court, sitting as a court of admiralty, had no jurisdiction to try an action for damages against a ship-owner arising from a fire on land communicated by the ship, or from a collision between the ship and a structure on land, such as a bridge or pier. The tort in both cases would have been a non-maritime tort and as such not within the cognizance of an admiralty court. *The Plymouth*, 3 Wall. 20; *The Troy*, 208 U. S. 321.

Inasmuch as the owner's liability was not limited by the statutes providing for a limited liability, the pendency of a petition to obtain the benefits of the limitation did not operate to draw into such a proceeding actions for a liability which could in no wise be affected by it. *Ex parte Phenix Insurance Co.*, 118 U. S. 610. Such was the law and so it still is unless changed by the eighteenth section of the act of June 26, 1884. That section is found in a chapter, the title of which is "An act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade and for other purposes." The eighteenth section reads as follows:

"That the individual liability of a ship-owner, shall be limited to the proportion of any or all debts and liabilities

that his individual share of the vessel bears to the whole; and the aggregate liabilities of all the owners of a vessel on account of the same shall not exceed the value of such vessels and freight pending: Provided, That this provision shall not affect the liability of any owner incurred previous to the passage of this act, nor prevent any claimant from joining all the owners in one action; nor shall the same apply to wages due to persons employed by said shipowners."

That the provision is not as definite as desirable may be conceded. The contention upon the one hand is that the limitation is extended only to obligations *ex contractu*, while upon the other, that every kind of liability which might fall upon an owner on account of the ship incurred without his knowledge or privity is given the benefit of the provision. That it was intended to limit the owner's liability in respect of debts contracted on account of the ship is plain. But if that was the only purpose why add the significant words, "and liabilities"? The limited liability act, as it stood, did not include the owner's individual liability for obligations *ex contractu* incurred without his knowledge or privity. Neither did it extend to his individual liability for non-maritime torts by the master or crew. Was it the purpose of Congress to exclude this kind of an individual responsibility from the benefits of the limited liability statute, while including every other class and kind of individual liability, except seamen's wages? Is no significance to be attached to the fact that the provision does not stop by adding to the former kind of claims against an owner "any and all debts," but terminates the clause by inserting, "and liabilities," a perfectly unnecessary statement, if it was only meant to extend the limitation to obligations *ex contractu?* The meagre debate which occurred upon this section of the act,—an act which included many other matters concerning the shipping interests of the country,—if competent

at all, throws little or no light as to the meaning which was supposed to be attached to liabilities, as distinguished from claims arising out of contract. There does appear, however, a broad general purpose to put a ship-owner in the status of one whose risk on account of obligations arising from the conduct of the master and crew is confined to his proportionate interest in the ship and her freight. No purpose to repeal or qualify any of the terms of the existing liability law is declared, nor is this section declared, in words, to be an amendment of that law. But neither fact is of any marked importance. If the necessary effect be to repeal any part of the former law because of repugnance, that consequence must be declared. So, too, if it be in effect an amendment of the law as it stood, by extending that law to cases not before within it, that effect must be given to it, without any unnecessary disturbance of the qualifications or procedure under the former law.

The legislation is in *pari materia* with the act of March 3, 1851, 9 Stat. 635, c. 43, as carried into the Revised Statutes as §§ 4283 *et seq.*, and must be read in connection with that law, and so read, should be given such an effect not incongruous with that law so far as consistent with the terms of the later legislation. The former law embraced liabilities for maritime torts, but excluded both debts and liabilities for non-maritime torts. The section under consideration includes debts, save wages of seamen and liabilities of an owner incurred prior to the passage of the law. The avowed purpose of the original act was to encourage American investments in ships. This was accomplished by confining the owner's individual liability, when not the result of his own fault, in the instances enumerated, to his share in the ship. The same public policy is declared to be the motive of the act of which this section is a part. True, a liability may arise out of a contract as well as from a tort. But a liability *ex contractu* is included *ex vi termini*, and the addition of the words "and liabilities"

would be tautology unless meant to embrace liabilities not arising from "debts."

In view of the manifest policy of Congress to further encourage the ship-owning industry and the very broad terms employed in this last legislation, we can but infer that the policy of the Government was to confine the risk of an owner not personally at fault to his interest in the ship. To say that Congress meant no more by extending the limitation to any and all debts and liabilities than to include obligations arising *ex contractu*, would be to utterly ignore the fact that such a construction would leave an owner subject to a large class of obligations arising from non-maritime torts, and leave nothing to which the words, "any and all . . . liabilities" could apply. In *Butler* v. *Steamship Company*, 130 U. S. 527, 549, 553, the words "the liability of the owner . . . shall in no case exceed," etc., were construed as extending to any liability "for any act, matter, loss, damage or forfeiture whatever, done or incurred," and as therefore providing that the "owners shall not be liable beyond their interest in the ship and freight for the acts of the master or crew done without their privity or knowledge." Upon this interpretation of § 4283, it was held that liabilities of the owner for injuries to persons were included in the limitation, as well as injuries to goods. Referring to the eighteenth section of the act of 1884, which did not apply in that case because the injury occurred before its passage, the court said (p. 553), it "seems to have been intended as explanatory of the intent of Congress in this class of legislation. It declares that the individual liability of a shipowner shall be limited to the proportion of any or all debts and liabilities that his individual share of the vessel bears to the whole; and the aggregate liabilities of all the owners of a vessel on account of the same shall not exceed the value of such vessel and freight pending. The language is somewhat vague, it is true; but it is possible that it was

intended to remove all doubts of the application of the limited liability law to all cases of loss and injury caused without the privity or knowledge of the owner. But it is unnecessary to decide this point in the present case. The pendency of the proceedings in the limited liability cause was a sufficient answer to the libel of the appellants."

Touching the wide purpose of Congress as indicated by the various provisions limiting the ship-owner's liability, the court, in the same case, said (p. 549):

"If we look at the ground of the law of limited responsibility of ship-owners, we shall have no difficulty in reaching the conclusion that it covers the case of injuries to the person as well as that of injuries to goods and merchandise. That ground is, that for the encouragement of ship-building and the employment of ships in commerce, the owners shall not be liable beyond their interest in the ship and freight for the acts of the master or crew done without their privity or knowledge. It extends to liability for every kind of loss, damage and injury. This is the language of the maritime law, and it is the language of our statute which virtually adopts that law."

Neither is it necessary to conclude that the section in question is a repealing act as to any of the qualifications of the preceding limitations found in §§ 4283 *et seq.*, of the Revised Statutes. To so hold would be to attribute to Congress a wider purpose than we have any reason to suppose—that of extending the benefits of §§ 4283 *et seq.*, regardless of the owner's knowledge or privity.

That would be to throw the section out of correspondence with the existing limitations.

We therefore conclude that the section in question was intended to add to the enumerated claims of the old law "any and all debts and liabilities" not theretofore included. This is the interpretation suggested in *Butler* v. *Steamship Co., supra.* That the section operates as such an amendment of the existing law and not as a repeal of

the qualifications found in that law, is the view adopted by three Circuit Courts of Appeal, in the cases of *The Republic*, 61 Fed. Rep. 109, in the Second Circuit; *The Annie Faxon*, 75 Fed. Rep. 312, in the Ninth Circuit, and in *Towing Company* v. *Transportation Company*, 155 Fed. Rep. 11, in the Sixth Circuit, as well as by a number of District Courts, among them being the cases of *The Amos D. Carver*, 35 Fed. Rep. 665, and *In re Meyer*, 74 Fed. Rep. 881.

Thus construed, the section harmonizes with the policy of limiting the owner's risk to his interest in the ship in respect of all claims arising out of the conduct of the master and crew, whether the liability be strictly maritime or from a tort non-maritime, but leaves him liable for his own fault, neglect and contracts.

If thus the owner's liability for a tort permitted or incurred through the master or crew, although non-maritime because due to a collision between the ship and a structure upon land, be one in respect to which his liability is limited, and he applies for the benefit of such limitation to the proper District Court of the United States, "all proceedings," by the express terms of § 4285, Revised Statutes, "against the owner shall cease." The procedure in any such case is prescribed by the 54th and 55th rules in admiralty, where it is said that the court shall, "on application of the said owner or owners, make an order to restrain the further prosecution of all and any suit or suits against said owner or owners in respect of any such claim or claims." *Providence & N. Y. Steamship Co.* v. *Hill Mfg. Co.*, 109 U. S. 578; *Butler* v. *Steamship Co.*, 130 U. S. 527, 549.

The case of *Ex parte Phenix Insurance Co.*, 118 U. S. 610, which was a petition for the benefits of the limited liability act and to stay suits at common law against the owner for liability by fire carried to buildings on land communicated from the ship, has been cited as holding that the limited liability statute did not apply to such a claim, and that a

court of admiralty could not draw to itself jurisdiction over any such claim. But that liability was incurred on September 20, 1880, a date antecedent to the act of 1884, which act expressly excluded liabilities which arose before its passage. That the decision by this court was not made until November, 1886, and that the opinion makes no reference to the act of 1884 is of no importance, since the act had no application.

The decree is reversed and the case remanded for further proceedings in accordance with this opinion.